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Supreme Court, U.S.
FILED

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No. ______ OFFICE OF THE CLERK

IN THE

SUPREME COURT FOR THE UNITED STATES

John Nunley, Veronica Nunley, Kim Nunley
and on behalf of all others similarly situated

Petitioners

v.

Banjo Mountain, Inc., et al
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit and to the United States
District Court for the Northern District of Georgia

PETITION FOR WRIT OF CERTIORARI FOR CERTIFIED QUESTIONS ON DIRECT APPEAL TO THE UNITED STATES DISTRICT COURT AND APPELLATE COURT BEFORE JUDGMENT IS RENDERED IN APPELLATE COURT

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109 pp

QUESTIONS PRESENTED

Petitioners certify to the United States Supreme Court the following questions of whether the local rules, internal operating procedures, and orders of the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Northern District of Georgia concerning FRAP Rule 3, 4, 10, 11, 12, and 31 accomplish the following:

1. Block Eleventh Circuit litigants from access to the Federal Rules of Appellate Procedure Rules 3, 4, 10, 11, 12, and 31;

2 Bypass the Federal Rules of Appellate Procedure and the Advisory Committee Notes to Rules to 3, 4, 10, 11, 12, and 31 to establish and enforce their own local definitions of appellate rules and procedures concerning jurisdiction, docketing, and setting the filing date for briefs only through 11th Cir. R. 12-1, 31-1(a), 31-1(c) where the Federal Rules of Appellate Procedure allow for no such procedures;

4. Circumvent and violate the rules of procedures prescribed in the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure Rules and in the Federal Rules of Evidence as stated in Appendices X, Y, and Z.

5. Circumvent and violate public policy, public law and congressional intent as stated in Appendix V.

6. Circumvent and violate rulemaking authority as stated in Appendix W.

7. Violate and circumvent the inherent power of the court;

8. Segregate and discriminate against the Petitioners and/or 11th Circuit litigants;

9. Institute legislative acts for judicial decisions and institute judicial decisions for legislative acts;

10. Violate the Constitution for the United States of America, specifically at: U.S. Const. art. 1. § 9; art. IV, § 4; amend. I; amend. V; amend IX; amend. X as stated in Appendix T.

11. Violate the Georgia Constitution, specifically at: GA Const. of 2001, art. I, § I, ¶ I; art. I, § I, ¶ II; art. I, § I, ¶ VI; art. I, § I, ¶ IX; art. I, § I, ¶ X; art. I, § I, ¶ XI; art. I, § I, ¶ XII; art. I, § I, ¶ XIV; art. I, § I, ¶ XXVIII; art. I, § II, ¶ III; art. I, § III, ¶ I as stated in Appendix U.

12. Whether the certified questions rise to the level of constitutional deprivation as to invoke original and discretionary power of the United States Supreme Court *in light of the fact that*: (1) it has original jurisdiction over the rulemaking authority of the lower courts; (2) it has original jurisdiction at: U.S. Const. art. III. § 1 and § 2; (3) it has original jurisdiction to review conflicts between the federal rules and the Constitution for the State of Georgia; (4) the Federal Rules of Appellate Procedure are established procedure for all federal courts and is a national policy for the procedure of obtaining justice in federal courts and in many state courts; and (5) the said local rules and internal operating procedures have been established, implemented, enforced and duplicated – not for national distribution -- but only for the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Northern District of Georgia as local procedure for obtaining justice; (6) failure of review by this court will effectuate severe irreconcilable civil disabilities upon the Petitioners; and (7) failure of this court to afford review essentially bolts the doors to justice for all citizens of the United States.

PARTIES TO THE ACTION BELOW

All defendants/appellees do not appear in the caption of the case on the cover page. Below is a full listing of all the defendants/appellees in this case.

1. Banjo Mountain, Inc., as a Corporation with Faye Grindley, George Grindley, Glen Grindley, and others, in their corporate, professional and personal capacities;
2. Clark and Clark, P.C. with Herman Clark, David L Clark, Barry A. Lee, Ashley R. Miller, Avary Dimmock, Jr., and others, in their corporate, professional, and personal capacities;
3. Gilmer County and all of its agencies, departments and offices, as a sovereign, body corporate and politic by, through and with the Board of Commissioners as Rayburn Smith, Steve Ralston, Charles Fowler and others in their corporate, professional and personal capacities;
4. Glenda Sue Johnson and others in their professional and personal capacities;
5. Brenda Weaver, and others in their professional and personal capacities;
6. Bobby C. Milam and others in their professional and personal capacities;
7. George Weaver and others in their professional and personal capacities;
8. William Reilly and others in their corporate, professional, and personal capacities;
9. Edwin Marger and others in their corporate, professional and personal capacities;
10. Ronald Armstrong and others in their corporate, professional and personal capacities;
11. Michael McKinney and others in their corporate, professional and personal capacities;
12. Lee Taylor and others in their corporate, professional and personal capacities

CERTIFICATE OF INTERESTED PERSONS

1. Supreme Court of the United States of America
    - Chief Justice William H. Rehnquist
2. United States Department of Justice
    - Department of Solicitor General
    - Solicitor General Theodore B. Olson
3. U.S. House of Representatives
    - Committee on the Judiciary
    - Subcommittee on Courts, the Internet, and Intellectual Property
    - Representative Bob Barr, State of Georgia
4. U.S. Senate Committee
    - Committee on the Judiciary
    - Subcommittee on Administrative Oversight and the Courts
5. Judicial Conference of the United States
    - Committee on Rules of Practice and Procedure
    - Advisory Committee on the Judiciary
    - Advisory Committee on Civil Rules
    - Advisory Committee on Evidence Rules
6. Federal Judicial Center
7. Administrative Office of the United States Courts
8. Judicial Conference for the 11th Circuit
9. Eleventh Circuit Court of Appeals
    - Chief Justice Anthony M. Kennedy
    - Judge Gerald B. Tjoflat
    - Judge Stanley F. Birch, Jr.
    - Judge Edward E. Carnes
    - Judge Rosemary Barkett
    - Judge Frank Mays Hull
    - Judge Stanley Marcus
    - Judge Charles R. Wilson
10. United States District Courts
    - Senior Judge William C. O'Kelley
    - Judge Richard W. Story
    - Chief Judge Orinda Evans, U.S. District Court for the Northern District of Georgia
11. Gilmer County Superior Court
    - Chief Judge Brenda Weaver
    - Judge Bobby Milam

    Judge William Reilly
    Judge Roger Bradley
12. Gilmer County, all of its agencies, departments and offices, as a sovereign, body corporate and politic
    Gilmer County Board of Commissioners
    County Attorney, Clark & Clark, PC
    Rayburn Smith
    Steve Ralston
    Charles Fowler
    Glenda Sue Johnson
13. Meadows, Ichter & Trigg, P.C.
    Michael Bowers
    Thomas Archer
14. John Nunley
15. Veronica Nunley
16. Kim Nunley
17. Posterity
18. Citizens of Gilmer County
19. Citizens of the United States of America
20. Eleventh Circuit Litigants
21. Mr. and Mrs. Greg Valley
22. Banjo Mountain, Inc.
    Faye Grindley
    George Grindley
    Glen Grindley
23. Clark and Clark, P.C.
    Herman Clark
    David L. Clark
    Barry A. Lee
    Ashley R. Miller
    Avary Dimmock, Jr.
24. Swift, Currie, McGhee & Hiers, LLP
    Robert Heustis
    James McDonald, Jr.
25. Law Offices of Edwin Marger
    Edwin Marger
26. Office of Ronald Armstrong
    Ronald Armstrong
27. Department of Law, State of Georgia
    Elizabeth D. Redisch

Thurbert Baker
Dennis Dunn

28. Edward W. Klein, Attorney at Law
   Edward W. Klein, III
29. Hawkins & Parnell, LLP
   Christine Mast
   Emory Palmer
30. Ralston & Panter
   David Ralston
31. Stewart, Melvin & Frost, LLP
   Jon Stewart
32. Weaver & Weaver
33. Law Office of George W. Weaver
   George Weaver
34. Ray & McKinney, Attorneys at Law
   Michael McKinney
35. Lee Taylor

This is to certify that the above is a complete list to the best of my ability of the trial judges, magistrates, all attorneys, persons, associations of persons, firms, partnerships, and corporations that have an interest in the outcome of this particular case and includes known subsidiaries, conglomerates, affiliates and parent corporations and other identifiable legal entitles related to a party that is involved in the above-referenced case. Done in good faith on this 13th day of August, 2002.

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No opinions are published or unpublished in this case. Review is based upon 28 U.S.C. § 2101(e) and 28 U.S.C. § 1254. Certification of Constitutional Questions concerns final and intermediate orders and other papers of the lower courts which Petitioners respectfully pray that a writ of certiorari issue to review the intermediate orders and other papers dated: 10/11/01, 10/15/01, 11/7/01, 11/19/01, 11/21/01, 12/14/01, 3/13/02, 3/15/02, 4/05/02, 4/24/02, 4/29/02, 5/13/02, 5/20/02, 6/12/02, 6/21/02, 6/27/02, 7/17/02, 7/25/02, 8/5/02. and 8/9/02. See Appendices A-SS.

STATEMENT OF JURISDICTION

Statutory jurisdiction is invoked through: (1) 28 U.S.C. § 2101(e): "An application to Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment." (2) 28 U.S.C § 1254. Courts of appeals; certiorari, certified questions: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: [1] By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."Constitutional jurisdiction is invoked by: (3) U.S. Const. art. III. §1 and §2 (see Appendix T). (4) Jurisdictional facts are extended to Appendix AB: Jurisdictional Statement.

CONSTITUTIONAL, STATUTORY AND RULE-MAKING PROVISIONS INVOLVED

1. Constitution for the United States of America at art. 1. §9; art. IV, §4; art. III, §1, 2. amend. I; amend. V; amend. IX; and amend. X. See Appendix T.
2. Constitution for the State of Georgia at art. I, §I, ¶I; art. I, §I, ¶ II; art. I, §I, ¶ VI; art. I, §I, ¶ IX; art. I, §I, ¶ X; art. I, §I, ¶ XI; art. I, §I, ¶ XII; art. I, §I, ¶ XIV; art. I, §I, ¶ XXVIII; art. I, §II, ¶ III; and art. I, §III, ¶ I. See Appendix U.
3. Rules Enabling Act of 1988; Federal Rules of

Evidence of 1975; Pub. L. 773, §§ 1291, 1254. See Appendix V.

4. United States Codes at 28 U.S.C. §§ 1254, 1291, 2071, 2072, 2074, 2101(e). See Appendix V.

5. FRAP Rules and local rules 1, 3, 4, 10, 11, 12, 31, 44, 42, 47(a), 47(b). See Appendix X. FRCP Rules 1, 82, 83, 84, L.R. 1.1 NDGa, L.R. 79.1 NDGa. See Appendix Y. FRE Rules 101 through 1103. See Appendix Z.

STATEMENT OF THE CASE

This case is now before the United States Court of Appeals for the Eleventh Circuit awaiting the filing of Petitioners' briefs due before August 19, 2002. The Petitioners, John Nunley, Veronica Nunley, and Kim Nunley, propria persona and on behalf of all others similarly situated, file this writ of certiorari for constitutional review of local rules and internal operating procedures (herein referred to as I.O.P.'s) of the United States Court of Appeals for the Eleventh Circuit and of the orders of the United States District Court for the Northern District of Georgia relating to procedures involving Federal Rules of Appellate Procedure (herein referred to as FRAP) Rules 3, 4, 10, 11, 12, and 31. Petitioners challenge 11th Cir. Rules and I.O.P.'s 10-1, 11-2, 12-1, 31-1(a), 31-1(c) as specifically violating: (1) constitutional, statutory and rulemaking provisions listed in Appendices T, U, V and W; (2) circumventing FRAP Rules as listed in Appendix X; (3) circumventing public law, public policy and congressional intent at Appendix V; (4) circumventing inherent power of the court; (5) segregating and discriminating against 11th Circuit litigants; (6) establishing legislative ex post facto acts for judicial decisions and judicial decisions for legislative acts. The lower courts violated constitutional, statutory, and rulemaking provisions listed in Appendices T, U, V, W and Z by skirting around FRAP Rules to provide a different mechanism using local rules and I.O.P.'s to define when the record is deemed completed and filed for purposes of appeal so that the 11th Circuit

Court would proceed directly to appeal thereby foreclosing a procedural step in developing the record on appeal where FRAP rules allow for no such procedures. The result being the lower courts have enacted unconstitutional rules and procedures that alter FRAP rules concerning the record on appeal. This has the effect of instituting legislative acts for judicial functions and judicial functions for legislative acts; instituting ex post facto rules and provisions; altering rules of evidence; receiving less or different testimony than the law requires; altering substantive and vested rights; inflicting constitutional deprivations only upon 11th Circuit litigants; altering Petitioner's appeal to Petitioner's detriment; imposing punishment; imposing civil disabilities; and, finally, imposing political disabilities in denying 11th Circuit litigants a republican form of government.

> "The principal function of procedural rules," as MR. JUSTICE BLACK observed in another context, "should be to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the courts." 346 U.S. 946 (1954) (separate statement upon adoption of revised Supreme Court Rules.) See Orders of the Supreme Court of the United States Adopting and Amending Rules, Order of April 29, 1980.

I. Explanation of Federal Rules and Local Rules

1. FRAP RULE 3. Appeal as of Right--How Taken.

DEFINITION. The first step in docketing and setting the filing date for briefs starts with FRAP Rule 3, notice of appeal and begins with only the district court. This rule outlines appellants' duties concerning filing and contents of the notice of appeal and duties of the district clerk concerning filing, consolidating, serving the notice of appeal, and the docket entries. The district clerk must promptly send a copy of the notice of appeal and of the docket entries – and any later docket entries – to the appellate court clerk named in the notice. This rule does not require certified copies of docket entries.

This rule has nothing to do whatsoever with the record on appeal. The district clerk's duty is to provide notice to the appellate court that appeal fees have been paid, a notice of appeal has been filed, and that uncertified docket entries are attached. This rule serves only as notice to the courts and all parties of an *intention to seek appeal*. It accomplishes nothing else.

CONFLICTS. There are no local rules established under FRAP Rule 3. However, 11th Circuit has established procedures through 11th Cir. R. 31-1(a) and 31-1(c) to prescribe a different meaning than FRAP had ordinarily envisioned for FRAP Rule 3(d). 11th Cir. R. 31-1(a) and 31-1(c) establishes jurisdiction to set the filing date for briefs based only upon receipt of the docket entries in FRAP Rule 3(d) and not based upon (1) a final order as provided for in 28 U.S.C. § 1291, (2) FRAP Rule 4(a)(4)(A), or (3) filing of the record on appeal as provided for in FRAP Rule 12(c). By proceeding with FRAP Rule 3(d) instead of FRAP Rule 12(c), 11th Circuit Court circumvented the purpose of the FRAP rules by evading FRAP Rule 10 and establishing that the record is deemed completed and filed when the appeal is docketed. FRAP Rule 3 only establishes an intent to appeal and does not confer jurisdiction, does not provide for the successful completion of the record on appeal as provided for in the federal rules, and does not encompass the meaning of the record on appeal as expressed in FRAP Rule 10. FRAP Rule 3 expressly states the district clerk's duties insofar as the plain meaning of sending the notice of appeal and uncertified docket entries to the appellate court and notification to appellate court of an appeal so that appellate court could itself establish a docket number only for docketing appeals in appellate court -- Jurisdiction, docketing and the setting of the filing date for briefs are three expressly and distinctively separate functions. FRAP Rule 3 does not confer jurisdiction neither does it substitute for appellants' mandatory duties under FRAP Rules 10 and 11.

2. FRAP RULE 4. Appeal as of Right--When Taken.

DEFINITION. This rule concerns appellate jurisdiction and the timeliness of the notice of appeal pending a post-trial motion. If a notice of appeal has been filed before or during a pending FRAP Rule 4(a)(4)(A) motion, jurisdiction remains in district court and the appeal is suspended pending resolution of said motion. 28 U.S.C. § 1291 establishes appellate jurisdiction upon all district court final orders encompassing post-trial motions. It explicitly prohibits appellate court jurisdiction while a post-trial motion is unresolved.

CONFLICTS: 11th Circuit procedures do not allow for post-trial motions as required under FRAP Rule 4. Instead, 11th Cir. R. 31-1 confers jurisdiction to address post-trial motions in terms of setting the filing date for briefs in conflict with FRAP Rule 4(a)(4)(A). FRAP Rule 4 provides for suspension of an appeal if a notice of appeal has been filed during the pendency of a post-trial motion. The appellate court is unable to issue orders or rulings setting the filing date for briefs while an appeal is suspended. This rule does not provide for the completion and filing of the record on appeal. After a post-trial motion is resolved, after FRAP Rules 10 and 11 have been successfully completed, after the record on appeal is filed, FRAP Rule 31 states that appellants have 40 days to file a brief. See Appendix AA: Rules Chart. It is impossible for 11th Circuit litigants to obtain meaningful appellate review when the record on appeal has already been determined and defined by the 11th Circuit. 28 U.S.C. 1291 states that courts of appeals shall have jurisdiction of appeals from all *FINAL* orders of the district courts.

Contrarily, 11th Cir. R. 31-1 does not suspend an appeal pending a FRAP Rule 4(a)(4)(A) motion, but instead establishes appellate jurisdiction prematurely to set the filing date for briefs thereby preventing appellants from accessing FRAP Rules 10 and 11 and declaring for itself when the record is deemed completed for purposes of appeal adversely affecting docketing, the record on appeal, and the filing date for briefs as noticed by FRAP Rules 3, 10, 11, 12, and 31 in contravention to statutory and rulemaking provisions listed in Appendices V, W, Z. FRAP Rule 4 does not authorize the appellate court to bypass FRAP Rules 3, 4, 10, 11, 12 and 31 to establish a different filing date for briefs when federal rules provide for no such procedure. The appellate court violated the numbering system of FRAP and knowingly removed FRAP Rule 4(a)(4)(A) out of its ordinary position to the 11th Cir. R. 31-1 to place artificial time constraints for the filing of briefs upon 11th Circuit litigants thereby circumventing and evading the provisions listed in Apendices T, U, V, W, X, Y, Z. FRAP Rule 4(a)(4)(A) suspends an appeal.

3. FRAP RULE 10. The Record on Appeal.

DEFINITION. Jurisdiction remains in district court. This rule describes the composition of the record on appeal *before* the appellate court proceeds to setting the filing date for briefs. The guidelines provide procedural steps for: (1) providing statements of the evidence when the proceedings were not recorded or when a transcript is unavailable; (2) obtaining a partial or complete transcript of proceedings; (3) correcting, supplementing, or modifying the record on appeal; (4) including in the record a transcript of all evidence to a finding or conclusion that is unsupported by the evidence or is contrary to the evidence; and (5) correcting the record on appeal through the district court and the appellate court. All of these steps are accomplished *before* the appellate court sets the filing date for briefs therein providing a remedy when there is disagreement as to the record on appeal. This rule also provides *mandatory* procedural steps for parties to follow to ensure finality and that the record is complete for purposes of appeal including all evidence. 11th Cir. R. 10-1 provides for a mandatory form, U.S. GPO: 1998-734-049/80146, "Eleventh Circuit Transcript Information Form," to be obtained from the district court for appellants to indicate whether or not appellants will be ordering a transcript as required by FRAP 10(b). The local rules and the form itself provide no information or instruction.

CONFLICTS: The district clerk directed the Petitioners to file the "Eleventh Circuit Transcript Information Form," and stated that it was compulsory even after the transcript had already been ordered and filed on October 19, 2001, and that it was ***mandatory*** to state that all necessary transcripts were on file by checking the box. The district clerk informed the Petitioners that the notice of appeal could not be filed if the Petitioners failed to follow the district clerk's directions. This form is not required and is not mandatory by any one of the FRAP Rules and appears to serve purposes other than ordering a transcript. 11th Cir. R. 10-1 violates the appellants' and Petitioners' due process rights and equal protection of the law to proceed to docketing and setting the filing date based upon this form because there are no instructions with the form indicating if the form is used for any other purposes other than for ordering a transcript. At no time did the 11th Circuit Court ever inform the Petitioners that their rights were being waived to the record on appeal by signing this form. The Petitioners retain all of their rights and have never knowingly or willingly ever given up any of their rights in the past, present or future. The federal rules and local rules do not provide notice and warning that the signing of this form concludes the record on appeal. The Petitioners were never informed and warned that this form indicated that all necessary transcripts were on file as complete for purposes of appeal. 11th Cir. Rule 10-1 violates fundamental fairness through notice and fair warning and clearly frustrates the policy underlying the meaning of FRAP Rule 10. The next procedural step to be completed before docketing and setting the filing date can be accomplished is FRAP Rule 11.

4. FRAP RULE 11. Forwarding the Record.

DEFINITION. At this time, jurisdiction remains in district court for the completion of this rule. This rule outlines the duties of appellants, district clerk, and court reporter concerning the compilation and completion of the record on appeal *before* it is sent to the appellate court for setting the filing date for briefs - *BEFORE.* The first procedure addresses the appellants, not the district court, and not the Court of Appeals. *Before* the district clerk can forward the record and *before* the appellate court can assume jurisdiction over an appeal, the appellants must comply with FRAP Rule 11(a) and FRAP Rule 10(b). The second procedure addresses the court reporter. This rule outlines the duties of the court reporter in preparing and filing a transcript, expected completion date, extensions of time for preparing the transcript and filing - all duties to be performed BEFORE the appellate court can set the filing date for briefs. The third procedure addresses the district clerk in terms of certification and transmission of the record on appeal. This rule is directed to the district clerk and takes effect 'as soon as' or when the record is completed and *before* the appellate court can proceed to setting the filing date for briefs. Upon completion of the record on appeal, district clerk must then certify and forward the record on appeal as complete for purposes of appeal to the appellate court for filing.

Contrarily, 11th Cir. R. 11-2 authorizes the district clerk to certify and determine when the record on appeal is complete for purposes of appeal within 14 days from the filing of the mandatory form, U.S. GPO: 1998-734-049/80146, "Eleventh Circuit Transcript Information Form" or 14 days after the filing of the transcript of the proceedings if one has been ordered thereby foreclosing procedural steps available to appellants in FRAP Rules 4 and 10.

FRAP Rule 11 expressly mandates that appellants have a duty to ensure that the record is complete for purposes of appeal. This burden does not evolve solely upon the district court, clerk, or court reporter. When the record on appeal is completed under FRAP Rule 11, district clerk then certifies and transmits the record and the appeal now leaves the hands of the district court for filing in the appellate court.

CONFLICTS: Contrary to the federal rules and advisory committee notes, the 11th Circuit implemented its own local rules concerning the composition, compilation and completion of the record on appeal. "Present Rule 11(b) provides that the record shall be transmitted when it is "complete for the purposes of the appeal." The proposed amended rule continues this requirement. The record is complete for the purposes of the appeal when it contains the original papers on file in the clerk's office, all necessary exhibits, and the transcript, if one is to be included." See Advisory Committee Notes. 1979 Amendment. 11th Circuit also established in this rule that the district clerk was the person entitled to determine that the record on appeal is complete for purposes of appeal contrary to its own determination. District clerk provided no notice to the Petitioners during the pendency of post-trial motions that it was proceeding to close and certify the record on appeal as complete for purposes of appeal on November 19, 2001, until the act was accomplished -- a fait accompli. FRAP rules provide for no such procedure. 11th Cir. R. 11-2 prevents appellants from accessing FRAP Rules 4, 10, and 11. Before docketing and setting the filing date for briefs, the next procedural step is FRAP Rule 12.

5. FRAP RULE 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record.

DEFINITION. Jurisdiction is now conferred upon the appellate court and FRAP Rule 12 governs the manner in which it dockets the appeal and files the record on appeal according to the law. FRAP Rule 12 provides separate procedural steps for docketing and filing the record on appeal. Rule 12(a) provides that docketing is accomplished when the appellate court receives a copy of the notice of appeal and docket entries. Rule 12(c) concerns filing the record, partial record or certificate and does not address setting the filing date for briefs.

Contrarily, 11th Cir. Rule 12-1 replaces FRAP Rule 12(c) as the time for serving and filing briefs by establishing that the record is either deemed completed and filed on the date the court reporter files the transcript with the district court or on the date the appeal is docketed as referenced by 11th Cir. R. 31-1.

CONFLICTS: FRAP Rules 4, 10, 11, and 12 afford the appellants full access to the record on appeal before proceeding to Rule 31. Contrarily, 11th Circuit Court reconstructed FRAP Rule 12 and combined the two separate procedural steps of docketing and filing the record into one procedural step to proceed to 11th Cir. R. 31-1 which is not provided for by the federal rules. 11th Cir. Rule 12-1 prescribes that the date the court reporter files the transcript or the date the appeal is docketed is the date the record is complete for purposes of appeal. FRAP Rule 12(a) is for docketing purposes only and has nothing to do with the record on appeal. The docket entries and the notice of appeal are not the same as the record on appeal. The docket entries, the notice of appeal and the court reporter's transcript *do not constitute a full and completed record for purposes of appeal in and of themselves.* 11th Cir. R. 12-1 completely evades the filing of the record on appeal as provided by FRAP Rule 12(c) and instead proceeds to set the filing date for briefs based upon docketing the appeal under FRAP Rule 12(a). FRAP Rule 31 is the next procedural step concerning serving and filing briefs.

6. FRAP RULE 31. Serving and Filing Briefs.

DEFINITION. This rule concerns the time to serve and file a brief, the number of copies and the consequences of failure to file. At this point the record on appeal has been filed *before* setting the filing date for briefs. This rule ensures that the record on appeal is completed and certified through FRAP Rules 3, 4, 10, 11 and 12 for purposes of appeal. Once the record has been completed through FRAP Rules 3, 4, 10, 11 and 12, the appellate court has jurisdiction to set the filing date for briefs 40 days from the day the record is filed complete for purposes of appeal and not 40 days from the day the district court has resolved a FRAP Rule 4(a)(4)(A) motion.

Contrarily, 11th Cir. R. 31-1(a) states that the docketed appeal itself governs the actual filing date for briefs which is based upon 11th Cir. R. 12-1 which prescribes that the notice of appeal, the docket entries and the filing of the court reporter's transcript constitutes the record on appeal and not as prescribed by FRAP Rule 12(c).

Confounding matters, the 11th Circuit now considers post-trial motions out of order. Appellate court, through the implementation of 11th Cir. R. 31-1(a) and 31-1(c), now refuses to suspend an appeal to allow appellants to engage and participate in FRAP Rule 10 accordingly. 11th Cir. R. 12-1 directs appellants to prepare their briefs immediately 40 days after the resolution of a post-trial motion instead of 40 days after the record is deemed complete for purposes of appeal according to FRAP Rule 31 which encompasses FRAP Rule 3, 4, 10, 11, 12. 11th Cir. R. 31-1(c) establishes a new filing date for briefs by bypassing FRAP Rules 10, 11, and 12 to prevent appellants from successfully completing the record on appeal. See Appendix C.

In conjunction with local rules, 11th Circuit I.O.P. 1 states that the clerk's office will send counsel and pro se parties a letter confirming the due date for filing appellant's brief consistent with the provisions of 11th Cir. R. 12-1 and 11th Cir. R. 31-1. Petitioners assume this provision to be "Notice," U.S. GPO:2000-634-243/20103, Rev.: 9/2000, page 1 of 6, and memo dated March 15, 2002, from the 11th Circuit Court of Appeals to the parties: "Eleventh Circuit Rule 31-1 requires that APPELLANTS' BRIEF AND RECORD EXCERPTS BE SERVED AND FILED WITHIN FORTY (40) DAYS FROM March 13, 2002. The above date is the date a pending motion or matter was ruled on or resolved and the appeal was allowed to proceed, as provided by 11th Cir. R. 31-1(c)."

CONFLICTS: After appellants pay the fees and file a notice of appeal with district court, the appellate court proceeds to docket the appeal according to FRAP Rule 3(d). Appellate court obtains jurisdiction of an appeal after a district court's FINAL ORDER has been entered which encompasses a FRAP Rule 4(a)(4)(A) motion as provided for by 28 U.S.C. § 1291. After a final order has issued, the parties may proceed to the record on appeal as provided for in FRAP Rules 10, 11 and 12. After the record on appeal has been completed and certified through FRAP Rules 10, 11, and 12, the appellate court has authority to proceed to FRAP Rule 31(a) to set the filing date for briefs. However, the 11th Circuit rules conflict with FRAP Rule 31 insofar as the 11th Circuit Court obtains jurisdiction outside of 28 U.S.C. § 1291 to prescribe what constitutes the record on appeal, who determines when the record is deemed filed and completed for purposes of appeal circumventing FRAP Rules 3, 4, 10, 11, and 12.

Petitioners' case is now before the United States Supreme Court asserting that the district court and appellate court have failed to abide by FRAP Rules 3, 4, 10, 11, 12 and 31 and have withheld evidence to the detriment of the Petitioners appeal thereby forboding a disastrous outcome.

II. Pleadings and Orders

The Constitution for the United States of America, Congress and the courts through the Federal Rules of Appellate Procedure set out the guidelines for the appellate courts to follow in obtaining appellate jurisdiction, docketing and setting the filing date for briefs. Jurisdiction, docketing and setting the filing date for briefs are three distinctively separate functions and the one is not the other. Contrary to the stated objections of the United States Constitution, Congress, the courts, and rule-making authority as listed in Appendices T, U, V, W, X, Y and Z, the 11th Circuit Court instituted its own rules using a single linear process based only upon the notice of appeal generated from FRAP Rule 3(d) -- which doesn't encompass the record on appeal -- as authority to proceed with docketing and setting the filing date for briefs. See "Rules Chart" at Appendix AA. The appellate court enlarged its jurisdiction and short-circuited FRAP by declaring when the record is deemed completed and filed so as to foreclose the procedural steps in developing the record on appeal as provided in FRAP Rules 3, 4, 10, 11, 12, 31. The consequence of substituting its own procedural rules in place of FRAP rules resulted in the exercise of premature jurisdiction to docket and set the filing date for briefs without allowing appellants to perfect the record for purposes of appeal and resulting in broad violations of the Federal Rules of Evidence (FRE), constitutional, statutory and rulemaking provisions listed in Appendices T, U, V, W, Z.

Petitioners filed an initial claim in district court on June 18, 2001. Petitioners' pleadings filed in the lower courts are not attached to the appendix due to the volume of the records and in accord with Supreme Court Rule 12(7) which states that "In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court." Petitioners filed notices of appeal with district court based upon the following district court orders: October 11, 2001; October 15, 2001; December 14, 2001; March 13, 2002; and June 27, 2002 which are attached in Appendices M through SS.

The commencement of Petitioners issues presented here for review began when the appellate court docketed Petitioners' appeal on November 7, 2001, pending an FRAP Rule 4(a)(4)(A) motion dated October 26, 2001. The district clerk certified the record on appeal as complete for purposes of appeal on November 19, 2001. On November 21, 2001, the appellate court suspended Petitioners' notice of appeal until Petitioners' October 26th post-trial motion was resolved by the district court. On December 12th, Petitioners filed for an emergency stay to maintain the status quo in appellate court. District court disposed of the October 26th post-trial motion on December 14, 2001. On March 13, 2002, district court granted sanctions to appellees. On March 15th, appellate court notified Petitioners of 40 days to file their brief from March 13th.

The Petitioners have filed numerous pleadings concerning the record on appeal with the district court, court reporter, district clerk, and appellate court to correct, modify, and to retain their rights to the record on appeal -- all to no avail. On March 20th, Petitioner filed in district court "Order to Court and to Court Reporter to Complete the Record on Appeal of Transcript Dated October 3, 2001" and "Notice for Certified District Court Docket Sheet Comprising the Record." On April 1st the Petitioners filed the following pleadings in district court: (1) certified letter to Sharon Upchurch, United States Court Reporter demanding that the court reporter complete the transcript; (2) "Eleventh Circuit Transcript Information Form" ordering a completed transcript and informing all parties that the record was incomplete; (3) "Brief in Support of Motion for Correction or Modification of the Record Under FRAP Rule 10(e) (1) and (2) and Notice to Proceed Under FRAP Rule 10(b)(2) With Unsupported Finding or Conclusion."

On April 3rd, Petitioners filed in appellate court "Appellants' Motion for Correction or Modification of the Record Under FRAP Rule 10(e)(1) and (2) and Appellants' Motion to Suspend Appeal Until the Matter is Resolved." On April 5th, the appellate court issued a letter to the appellees to respond by April 16th to Petitioners' motion and denied Petitioners' December 12, 2001, request for a stay pending appeal to maintain the status quo. On April 6th, Petitioners file emergency stay to maintain the status quo in district court. On April 11th, in appellate court, Petitioners filed Writ of Mandamus to U.S. District Court Reporter, Dist. Ct. Docket No. 01-00110-CV-RWS-2, No. 02-12002-H. On April 16th, in appellate court, Petitioners filed Writ of Mandamus to U.S. District Court Clerk, Dist. Ct. Docket No. 01-00110-CV-RWS-2, No. 02-12078-H. On April 17th, appellate court granted Petitioners an extension of time of seven days to file briefs by April 29th. On April 24th, the appellate court denied Petitioners' April 3rd motion for correction or modification of the record that was filed in appellate court. At this time, the appellate court suspended Petitioners' appeal and ordered the Petitioners to file their brief 21 days after the district court resolved Petitioners' April 1st district court motion to correct or modify the record of April 1st. On April 26th, the Petitioners filed in the appellate court according to FRAP Rule 44, "Emergency Petition for En Banc Hearing on Certification of Constitutional Questions to the United States Court of Appeals for the Eleventh Circuit and Notice of Intent for Writ of Prohibition to United States Supreme Court Against the 11th Circuit Court of Appeals." On April 29th, the appellate court returned Petitioners constitutional questions as unfiled stating that the appellate court order of April 24th had made them unnecessary.

On May 13th, appellate court dismissed Petitioners' April 16th mandamus to the district clerk and dismissed Petitioners' May 31st motion for reconsideration on June 21st. On May 20th, the appellate court dismissed Petitioners' April 11th mandamus to the court reporter and dismissed Petitioners' June 10th motion for reconsideration on June 12th because it was not filed within 21 days of entry of order. On June 27th, the district court denied Petitioners' motion of April 1st to correct the record. On July 2nd, the Petitioners went to the district court to review the court reporters shorthand notes and this is what transpired.

> "On July 2, 2002, Appellants went to District Court for the Northern District of Georgia to review the original shorthand notes or other original records of the hearing taken on October 3, 2001. Appellants asked Clerk Harton to review the original shorthand notes or other original records of the October 3rd hearing. To further exacerbate an already contentious situation, Clerk Harton denied Appellants' request. Clerk Harton denied Appellants access to such records and informed Appellants that the stenotype notes are not part of the file. Clerk Harton informed us that she did not have a copy of the stenotype notes for us to review. As a result, there was nothing there for

us to review. Clerk Harton informed the Appellants that we needed to contact the court reporter and that the court reporter would get Appellants a copy and bill us for costs." See "Plaintiffs'-Appellants' Brief in Support of Motion for Relief with Findings of Fact and Conclusions of Law with Certainty in Writing from Order Dated June 27, 2002" filed in district court on July 12th and not attached to this brief.

As a result of the above conditions, on July 5th, Petitioners filed in district court "Actual Constructive Notice of Intent to Sue Sharon Upchurch, Official District Court Reporter and Demand for Release of Original Shorthand Notes or Other Original Records for Plaintiffs' Immediate Review" and "Actual Constructive Notice of Intent to Sue District Court Clerks Stacey Kemp and Debra James Harton and Demand for Release of Original Shorthand Notes or Other Original Records for Plaintiffs' Immediate Review." On July 12th, Petitioners filed in district court a motion for relief under FRAP Rule 4(a)(4)(A).

On July 15th, the Petitioners filed in appellate court an emergency motion for an immediate suspension of Petitioners' appeal. On July 17th, the appellate court responded by requiring those appellees who wished to respond to respond by July 29th. Appellees requested that appellate court demand that Petitioners file their briefs immediately; that Petitioners' pleadings in both courts are frivolous; and that the record has been determined complete by district and appellate court.

On July 24th, the district court denied Petitioners' April 6th emergency stay to maintain the status quo which was unopposed by the appellees (see Appendix S). District court's order is confusing because it addresses many of Petitioners' pleadings that were filed in district court -- not just the emergency motion for a stay pending appeal -- so that the order is a confusing conglomeration of issues making it difficult for the Petitioners to reply. In essence, the order of July 24th denying Petitioners request to maintain the status quo determined that the record on appeal is complete for purposes of appeal implementing federal rules and procedures that implicate important questions of federal law that have not been, but must be, settled by this court. It is a rare event to have Petitioners who suffer as a result of federal rules -- not committees, councils and conferences who develop the rules -- but Petitioners who have to deal with the reality of the federal rules come before the Supreme Court challenging the very same rules that the Supreme Court restructured to avoid the very damage that the Petitioners now have to suffer with. District court has now involved itself with appellate court in blocking Petitioners from a federal process allowed in FRAP Rules 3, 4, 10, 11, 12 and 31 to the record on appeal.

The Appellate court's order dated April 24th gave Petitioners 21 days to file their brief from the entry on the docket of the district court's order dated June 27th making Petitioners brief due July 19th. FRAP Rule 31 entitles the Petitioners to 40 days after the filing in the appellate court of a corrected record on appeal and not 21 days to file a brief as stated by the appellate court. Also, FRCP and FRAP allow the Petitioners to file a motion for reconsideration in district court which the Petitioners did on July 12th. However, due to the lack of communication, hostile responses, denial of procedural motions and lack of remedy from the district and appellate courts, Petitioners, in order to retain their constitutional rights for review, were forced to also file in appellate court the July 15th emergency motion for suspension of appeal because it was not clear whether FRAP Rules 3, 4, 10, 11, 12 and 31 applied in these courts. On August 5th, while a post-trial motion remained unresolved by district court, the appellate court conferred jurisdiction upon itself outside of 28 U.S.C. § 1291 to order the Petitioners to file their briefs within 14 days of August 5th making the due date for the filing of briefs August 19, 2002. On August 9th, the district court denied Petitioners' post-trial motion. The district court failed to provide in its order findings of fact and conclusions of law with certainty in writing.

However, district court continually persists in stating that the Petitioners have not provided specificity or justification for correcting the transcript/evidence and other such requests of which the district court refuses to even mention in its order. District Court continues to testify to the accuracy of the transcript without impeaching the court reporter thus preventing the Petitioners from providing evidence that the district court's finding or conclusion of its summary judgment dismissal is unsupported and contrary to the evidence. District court has obstructed justice in preventing the Petitioners from including in the record a transcript of all evidence relevant to that finding or conclusion. District court has determined that notes written in shorthand would be of no value to the appellate court. Shorthand notes are like secret codes available only to the district court and the Petitioners are denied their constitutional rights as listed in Appendices T and U. Petitioners are now left with only two choices: that of filing a brief in appellate court or filing a brief with the United States Supreme Court before the appellate court dismisses Petitioners' appeal. Due to the rulemaking violations of FRAP Rules 3, 4, 10, 11, 12, and 31 by district and appellate courts, Petitioners have chosen to file their brief with the Supreme Court instead of the appellate court.

III. Argument

The Constitution for the United States of America, Congress and the courts through the Federal Rules of Appellate Procedure set out the guidelines for the appellate courts to follow in docketing and setting the filing date for briefs after obtaining jurisdiction. Jurisdiction, docketing and the setting of the filing date for briefs are three distinctively separate functions and the one is not the other. Contrary to the stated objections of the United States Constitution, Congress, the courts, and rule-making authority, the 11th Circuit

Court instituted its own rules using a single linear process based only upon the notice of appeal generated from FRAP Rule 3(d) -- which doesn't encompass the record on appeal -- as authority to proceed with docketing and setting the filing date for briefs. (See Rules Chart at Appendix AA.) 11th Cir. Rules 10-1, 11-2, 12-1, 31-1(a), and 31-1(c) violate rulemaking authority at Appendix W to circumvent and frustrate the underlying policies of the Federal Rules of Appellate Procedure, specifically Rules 3, 4, 10, 11, 12, and 31 abridging and modifying the Petitioners' adjective and substantive rights in violation of the U.S. Constitution at Amendment V, due process and equal protection.

The Federal Rules of Appellate Procedure protect all citizens in all states, not just the 11th Circuit Court. The 11th Circuit Court has instituted its own rules for its own circuit therein treating differently the individuals before it. The 11th Circuit rules have reconstructed and restated FRAP to prematurely obtain jurisdiction, docket, and set the filing date for briefs without developing the record on appeal when the federal rules provide for no such procedures. The 11th Circuit rules prescribe when the record is deemed completed and filed. This is a federal agency developing federal policy in violation of equal protection of the laws.

> "The right to equal protection of the laws is a personal right, see Shelley v. Kraemer, 334 U.S. 1, 22 (1948), securing to each individual an immunity from treatment predicated simply on membership in a particular racial or ethnic group...Upon that basis, we are governed by one Constitution, providing a single guarantee of equal protection, one that extends equally to all citizens." See Metro Broadcasting v. Federal Communications Commission et al. 1990. SCT.43390<http://www.versuslaw.com>;497U.S. 547, 110 S. Ct. 2997, 111 L. Ed. 2d 445, 58 U.S.L.W. 5053 at ¶ 91.

Federal courts and all parties to litigation therein are bound by the rules of the court. 28 U.S.C. § 2072(b) states that such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. FRAP Rule 1 states that these rules do not extend or limit the jurisdiction of the court of appeals. Contrary to statutory provisions listed in Appendix V, 11th Circuit Court proceeded to act outside its authority and erroneously within its authority to extend its jurisdiction through implementation of its own local rules as authority to proceed immediately, without FRAP Rule 10, to docketing and setting the filing date for briefs *when the Federal Rules of Appellate Procedure allow for no such provisions.*

> "The Rules of Appellate Procedure "were not adopted to set traps and pitfalls by way of technicalities for unwary litigants." Des Isles v. Evans, 225 F.2d 235, 236 (5th Cir. 1955); see also Advisory Committee Notes to Federal Rules of Appellate Procedure 3 & 4 ("decisions under the present rules which dispense with literal compliance in cases in which it cannot fairly be exacted should control interpretation of these rules")." See Willis v. Newsome, 747 F.2d 605, 1984.C11.40195 <http://www.versuslaw.com> ¶ 13.

The certified and completed record for purposes of appeal provides finality and certainty to the record on review before the appellate court obtains jurisdiction over an appeal. This ensures equal protection of the law, due process, and a meaningful review of the lower court proceedings. However, the 11th Cir. Rules 31-1(a) and 31-1(c) is unequal in its treatment of equal rights. The Petitioners are not required to file an appeal by the due date of August 19, 2002, until the Petitioners have had an opportunity to fulfill their obligations under FRAP Rules 10 and 11. It is not mandatory that the 11th Circuit Court dismiss Petitioners' case for failure to file a brief by August 19, 2002. The decision that the appellate court may proceed to setting the filing date for briefs based upon its decision as to when the record is deemed completed and filed is in contravention of FRE and the constitutional, statutory and rulemaking provisions listed in Appendices T, U, V, W, and Z and is null and void. This rule concerns the time to serve and file a brief, the number of copies and the consequences of failure to file. 11th Circuit Rule 31-1 circumvents FRAP Rule 31 to specifically establish that the docketing of the appeal itself based upon FRAP Rule 12(a) and not the filing of the record on appeal based upon FRAP Rule 12(c) governs the actual setting of the filing date for briefs.

On August 9th, the district court denied Petitioners' July 12th post-trial motion to correct or modify the record on appeal. During this time period, while this motion remained unresolved, the appellate court ordered the Petitioners to file their briefs within 14 days of its August 5th order making the due date for the filing of briefs set at August 19th. Throughout this appeal, the appellate court has proceeded with arbitrary time schedules not noticed in print for all 11th Circuit litigants to review. At no time did the appellate court ever afford to the Petitioners 40 days to file their briefs based upon FRAP Rules 4, 10, 11, 12 and 31. Instead, the appellate court afforded 21 days or 14 days based upon a court order or a whim. Printed local rules do not reflect the time schedules that the appellate court relied upon leaving the Petitioners without due process and notice.

> "The time prescribed by Rule 31(a) for preparing briefs - 40 days to the appellant, 30 days to the appellee - is well within the time that must ordinarily elapse in most circuits before an appeal can be reached for consideration. In those circuits, the time prescribed by the Rule should not be disturbed." See Advisory Committee Notes, 1970 Amendment.

Furthermore, Petitioners cannot prepare a brief without review of the record on appeal and without impeaching the court reporter. On July 2nd, district court prevented the Petitioners from review of the stenotype notes. On July 25th, district court released the stenotype notes for review only but prevented the Petitioners from rebutting the transcript leaving Petitioners with only 7 days to review the stenotype notes before the appellate court issued its order on August 5th ordering Petitioners to file their briefs by August 19th. Both the appellate and district court have severely limited Petitioners' access to the stenotype notes and have prevented Petitioners from entering evidence against the courts into the record. The appellate and district courts have an interest at stake in the evidence. The district court and the appellate court have executed ex post facto orders and procedures that adversely affect Petitioners' record on appeal.

> "The amendment provides that a notice of appeal filed before the disposition of a specified posttrial motion will become effective upon disposition of the motion. A notice filed before the filing of one of the specified motions or after the filing of a motion but before disposition of the motion is, in effect, suspended until the motion is disposed of, whereupon the previously filed notice effectively laces jurisdiction in the court of appeals." See Advisory Committee Notes. 1993 Amendment.

The appellate and district courts have forfeited Petitioners' rights to the record on appeal when no such procedure is allowed by the federal rules. No notice had been served upon the Petitioners that their rights to the record on appeal were being waived. The Petitioners retain all of their rights and have never knowingly or willingly ever given up any of their rights in the past, present or future.

> "The Fifth Amendment to the Constitution includes an equal protection component, Bolling v. Sharpe, 347 U.S. 497, 499, 98 L. Ed. 884, 74 S. Ct. 693 (1954), which requires that the federal government "accord every person within its jurisdiction equal protection of the laws." Christy v. Hodel, 857 F.2d 1324, 1331 (9th Cir. 1988), cert. denied, 490 U.S. 1114, 109 S. Ct. 3176, 104 L. Ed. 2d 1038 (1989). Equal protection claims under the Fifth Amendment are treated the same as those under the Fourteenth Amendment. San Francisco Arts & Athletics v. United States Olympic Committee, 483 U.S. 522,

> 542, 97 L. Ed. 2d 427, 107 S. Ct. 2971 n.21 (1987)." See United States v. Lafleur, 1992.C09.43061 <http://www.versuslaw.com>; 971 F.2d 200 at ¶ 79.

Petitioners have been denied a full and adequate defense to the record on appeal by the appellate court and the district court. The state of the record in this case is such that a meaningful review of the proceedings in district court is not possible. The appellate court cannot proceed with this appeal to docket and set the filing date until the record on appeal is corrected and a supplemental record is certified as complete for purposes of appeal. The 11th Circuit court itself recognized the importance of the record on appeal when it made the following statement in 1992:

> "Footnote 7. We are troubled that the district court's local summary judgment "procedure" precluded complete, informed review by this court because letters exchanged among the parties and the court pursuant to this "procedure" were not reflected on the docket and, therefore, were not part of the record heretofore. Had the panel at oral argument not inquired into the uncommon timing for filing the motion to dismiss before us, the local "procedure" would have evaded this court. It should not be necessary for this court to read between the lines of the docket and to ascertain at oral argument the procedure followed in a particular case by the district court. We emphasize to the district court that it is essential that communications between the trial court and the parties to an action as well as all rulings affecting the procedural rights of parties be shown on the docket and contained in the record to afford complete review by this court. Parties' procedural rights cannot be sacrificed in the interest of moving busy dockets. See Brown v. Crawford County, 960 F.2d 1002, 22 Fed.R.Serv.3d1063,1992.C11.41449 <http://www.versuslaw.com> at ¶ 55.

Petitioners filed numerous motions with district court, court reporter, district clerk, and appellate court to correct, modify and provide a certified record on appeal – all to no avail. This appeal has not been perfected by law and Petitioners are not required to submit a brief by August 19th. Appellate court is not authorized to dismiss Petitioners' case for failure to file a brief.

> "The Appellate Court is authorized to make and amend rules governing its practice that are not inconsistent with the Federal Rules of Civil Procedure or acts of Congress." (At ¶ 29) "The problem with the appellate rule is not that noncompliance with the rule will lead to dismissal but rather that the district court does not have the discretion to dismiss appellants' appeal if the local rule is not complied with should the equities of the case so demand. The appellate court may support its efforts to facilitate compliance with forwarding the record on appeal by enacting rules mandating actions that will bring the nature of the case to its attention. But the automatic nature of this rule is simply too harsh, particularly since the appellate court is not obligated by the Federal Rules of Appellate Procedure to dismiss the suit should the Appellants' repeated efforts at correcting and obtaining expedited replies to the record on appeal go unheeded. See Meadows v. U.S., 665 F.2d 1009, 1012 (11th Cir.1982)." (At ¶ 30) "Since dismissal with prejudice has such drastic consequences for the plaintiff, such dismissal is proper only where there is "a clear record of delay or willful contempt and a finding that lesser sanctions would not suffice." Thus, even though local rules are valid and binding on the parties, their enforcement must be tempered with due consideration of the circumstances." (At ¶ 32). "Automatic dismissal because of an appellants' failure to comply with a procedural requirement relating to reviewing the record on appeal without regard to the equities of a case, is contrary to the policy of the Federal Rules to secure the just and speedy determination of every action. See Fed.R.Civ.P. 1. . . . The Federal Rules provide opportunities to amend the record on appeal

and give courts the discretion to permit further amendments when justice so requires in order to prevent unjustified dismissals. See, e.g., Fed.R.Civ.P. 15. The Federal Rules emphasize fair notice and the doing of justice." (At ¶34) "The appellate court's per se rule exceeds the rule-making powers of the appellate court because it unduly and unnecessarily frustrates the policies underlying the Federal Rules. (At ¶ 35) See Hall v. Commissioner, 805 F.2d 1511, 1986.C11.40087<http://www.versuslaw.com> at ¶ 29, 30, 32, 34, and 35.

Petitioners are before appellate court in a vacuum, in silence, as if Petitioners make no difference and issues have already been decided. Petitioners are left with no plain, speedy or adequate remedy at law in the 11th Circuit except to file this desperate pleading insisting upon constitutional rights as provided for in Appendices T and U, and by 28 U.S.C. § 2072, and as provided by the federal rules in Appendices X, Y and Z.

"At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens "as individuals, not 'as simply components of a racial, religious, sexual or national class.'" Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris, 463 U.S. 1073, 1083 (1983)." See Metro Broadcasting v. Federal Communications Commission et al. 1990.SCT.43390 <http://www.versuslaw.com>; 497 U.S. 547, 110 S. Ct. 2997, 111 L. Ed. 2d 445, 58 U.S.L.W. 5053 at ¶ 82.

Petitioners believe that until the procedural steps involved in the appeal process concerning the district court, district clerk, court reporter and the appellate court have been properly and successfully implemented according to the law, the appellate court has no alternative but to suspend this appeal immediately and that said brief is due 40 days from the filing of the completed record on appeal under FRAP Rule 3, 4, 10, 11, 12 and 31. An automatic suspension does not involve the courts and the parties in argument for consideration of whether or not the appeal should be suspended. From the 11th Circuit Court we have the following statement:

> "Under Rule 83 of the Federal Rules of Civil Procedure, each district court is authorized to "make and amend rules governing its practice not inconsistent with these rules."*fn8 (emphasis added). See 28 U.S.C. § 2071(a); Colgrove v. Battin, 413 U.S. 149, 150-51, 93 S. Ct. 2448, 2449, 37 L. Ed. 2d 522 (1973). District courts are not required to adopt local rules, but they must not circumvent the Federal Rules of Civil Procedure by implementing local rules or "procedures" which do not afford parties rights that they are accorded under the Federal Rules. See Carver v. Bunch, 946 F.2d 451, 453 (6th Cir.1991) ("Local court rules . . . cannot conflict with the Federal Rules of Civil Procedure, Acts of Congress, and rules of practice and procedure prescribed by the Supreme Court."); Coady v. Aguadilla Terminal Inc., 456 F.2d 677, 678 (1st Cir.1972) ("[A] local rule cannot be applied if it is contrary to a federal statute or rule." (citing Hanna v. Plumer, 380 U.S. 460, 85 S. Ct. 1136, 14 L. Ed. 2d 8 (1965)))." See Hall v. Commissioner, 805 F.2d 1511,1986.C11.40087<http://www.versuslaw.com> at ¶ 35.

IV. Summary

The courts declare what the law is, not make the law. The lower judicial courts, sitting as Star-chambers and without benefit of trial, litigated questions according to law and adjudicated the substantive rights of the Petitioners through rulemaking authority listed in Appendix W. Instead of exercising its judicial function by declaring what the law is, by examining the evidence, decisions, questions of law and fact, the lower courts acted in a legislative capacity through the rulemaking authority at Appendix W to make local rules with the force of law that extinguishes procedures allowed under FRAP Rules 3, 4, 10, 11, 12, and 31 thereby altering the whole of the rules of evidence and changing the

Petitioners situation to their detriment. The exercise of a legislative act is the extension of a legislative act not a judicial act. A judicial act is an act of following and enforcing the law - not making the law. 11th Circuit Court, the judicial branch of government, exercised a legislative function to establish ex post facto evidentiary rules and procedures which do not recognize the inherent rights of individuals but deny to them a republican form of government and deny to them certain rights which are reserved to the people that are defensible by right by court and jury with compulsory process, truth given in evidence, due process and equal protection of the laws as guaranteed by the federal and state constitutions and as provided for by the federal rules and by Congress listed in Appendices T, U, V, W, X, Y and Z.

The ability of lower courts to effectuate local rule changes to FRAP Rules 3, 4, 10, 11, 12 and 31 implicates broad constitutional challenges concerning the administration of justice in a free society. The constitutional challenges are so broad and overreaching that the lower courts have essentially created courts akin to "Potemkin Villages" where "There is no such thing as justice--in or out of court."--Clarence Darrow. The 11th Circuit judiciary substantially changed evidentiary rules as listed in Appendix Z concerning the record on appeal. It is a waste of time to pursue an appeal in the 11th Circuit Court without the record on appeal as provided for by the federal rules and by Congress. The rule changes do not represent rational means to legitimate ends but impose severe liabilities where none existed before - liabilities that affect substantive and vested rights. FRAP Rules 10 and 11 concern the record on appeal which is the evidence necessary for obtaining meaningful appellate review.

Appellate and district court orders and local rules relating to FRAP Rules 3, 4, 10, 11, 12, and 31 prevent and obstruct Petitioners from accessing the record on appeal which has the effect of constructively altering the whole of the rules of evidence. Appellate court has essentially and prematurely determined for itself, when federal rules allow for no such procedures, why, where, what, who, and when to certify that the record is complete for purposes of appeal. The construction of the local rules essentially established a pivotal point upon which all direct and indirect actions, orders and rules revolve around ex post facto provisions. The lower courts cannot do indirectly that which they were forbidden from doing directly. The lower courts have now received less and different testimony than the constitution, public law and Congress require thereby altering substantive and vested rights without a trial; inflicting constitutional deprivations only upon 11th Circuit litigants; altering petitioners' appeal to Petitioners' detriment; imposing punishment without a trial; and imposing civil and political disabilities which simply boils down to broad constitutional violations as referenced in Appendices T and U. The 11th Circuit's alteration of FRAP Rules 3, 4, 10, 11, 12 and 31 has prevented the Petitioners from exercising their constitutional rights to meaningful access to the courts, compulsory process, the truth from being given in evidence, redress, etc.

REASONS FOR GRANTING

1. The 11th Circuit has so far departed from the accepted and usual course of judicial proceedings in the implementation of its local rules and I.O.P.'s concerning docketing, the record on appeal and setting the filing date for briefs that the outcome and effect of its rules and I.O.P.'s is so fundamentally unfair that an alteration of the judicial role which permits that will be a denial of due process. The 11th Circuit rules and I.O.P.s do not afford 11th Circuit litigants rights that they are accorded under the federal rules but are instead procedural impediments. The 11th Circuit local rules have established procedures where the federal rules have allowed for no such procedures.
2. The lower courts have implemented federal rules and procedures that implicate important questions of

federal law that have not been, but must be, settled by this court. Complicating this situation is the fact that the establishment of local rules is a nationwide practice affecting litigants all across the United States. Should the Supreme Court remain silent upon the constitutional questions presented in this case, lower courts will, of necessity, continue to develop their own unconstitutional local rules without fear of supervisory control resulting in failure to provide justice. The lower courts will justify the enforcement of their local rules and justify failure to provide justice as an emergency due to overcrowded dockets and the 90 judicial appointments that remain unfilled thereby bolting the doors to justice to all. "Prejudice, which sees what it pleases, cannot see what is plain." -- Aubrey T. de Vere. This type of rule making results in anarchy because the federal rules trickle down to the state level which trickles down to the county level. Failure to provide justice causes children and individuals to suffer, families to fall apart, and communities to create havoc out of order. Gilmer County is one such community because county officials believe, and rightly so, that the courts will sanction and penalize its citizens for attempting to redress the government for their grievances. Gilmer County citizens have no place to go. See "Entreaty" found at Appendix AC and articles from the Times Courier Newspaper at Appendices AD through AJ. The government is not listening to its citizens. When the three branches of government are in the hands of one branch, the pursuit of life liberty and happiness is no more. If this court won't hear the Petitioners' complaints, no one will.

3. The lower courts have decided important federal questions concerning federal rules and local rules that are erroneous and conflict with the relevant decisions of this court, the 11th Circuit, the U.S. Constitution, the Georgia Constitution, and with the public law as cited in this brief.

CONCLUSIONS

Petitioners request the opportunity to file a brief in support of the questions herein presented to the

Supreme Court. The presentment of certified questions did not allow for a full and adequate chronicle associated with Petitioners' specific claims in relationship to the questions herein presented. Nevertheless, Petitioners seek relief in the form of a mandate to the 11th Circuit Court to suspend Petitioners' appeal until the record on appeal is complete for purposes of appeal and in the form of a mandate to the district court to allow Petitioners to proceed with FRAP Rules 10, 11, and 12 as provided by the federal rules. Petitioners seek relief to complete the record on appeal to impeach the court reporter; to correct, modify and supplement the record on appeal or to provide an agreed statement as to the record on appeal; to have all original papers and exhibits received and filed in the district court included in the record on appeal; to allow Petitioners an opportunity to include in the record a transcript of all evidence relevant to Petitioners' contention that district court's finding or conclusion concerning its summary judgment is unsupported and contrary to the evidence. The above-requested relief and the petition for writ of certiorari should be granted for the reasons stated in this brief and for any other reasons that this court finds just.

Respectfully submitted and dated this 13th day of August, 2002.

John Nunley
John Nunley, Pro Per
645 Hummingbird Dr.
Ellijay, Georgia 30540
(706) 635-4386

Veronica Nunley
Veronica Nunley, Pro Per
645 Hummingbird Dr.
Ellijay, Georgia 30540
(706) 635-4386

Kim Nunley
Kim Nunley, Pro Per
524 Hummingbird Drive
Ellijay, Georgia 30540
(706) 635-1665

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

November 07, 2001

MEMORANDUM TO COUNSEL OR PARTIES
RE: 01-16248-H
John Nunley v. Banjo Mtn., Inc.
DC DKT NO.: 01-00110CV-RWS-2

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries.

Although trial exhibits are routinely transmitted to this court, contraband, weapons, and currency may be sent except by court order. Also, counsel must arrange at their own expense for transportation to and from this office of oversized exhibits. [See 11th Cir. R.11-3].

In lieu of arranging for transmittal by the district court of oversized physical exhibits, parities are encouraged to substitute photographs, diagrams, or models of lesser size and weight, or to stipulate to the nature and content of such exhibits. Exhibits retained by the district court remain a part of the record on appeal for all purposes [Fed.R.App.P. 11], and thus requests to transmit oversized exhibits are discouraged.

Counsel participating in this appeal should complete and return the enclosed appearance form within fourteen (14) days. [11th Cir.R. 46-1]. Only counsel who enter an appearance will be noted on the docket. Persons appearing pro se need not file an appearance form.

Sincerely,

THOMAS K. KAHN, Clerk
Reply To: Liz McDonald/wl/404-335-6187
c: District Court Clerk
Encl.

Appendix A: Memo of 11/7/01

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

November 21, 2001

Luther D. Thomas
Clerk, U.S. District Court
121 Spring Street, Room 201
Gainesville GA 30501

RE: 02-16248-H In Re: John Nunley
DC DKT NO.: 01-00110 CV-RWS-2

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries.

Although trial exhibits are routinely transmitted to this court, contraband, weapons, and currency may bot be sent except by court order. Also, counsel must arrange at their own expense for transportation to and from this office of oversized exhibits. [See 11th Cir. R. 11-3].

In lieu of arranging for transmittal by the district court of oversized physical exhibits, parities are encouraged to substitute photographs, diagrams, or models of lesser size and weight, or to stipulate to the nature and content of such exhibits. Exhibits retained by the district court remain a part of the record on appeal for all purposes [Fed.R.App.P. 11], and thus requests to transmit oversized exhibits are discouraged.

Counsel participating in this appeal should complete and return the enclosed appearance form within fourteen (14) days. [11th Cir. R. 46-1]. Only counsel who enter an appearance will be noted on the docket. Persons appearing pro se need not file an appearance form.

Appendix B, 1 of 2: Letter dated 11/21/01

The district court docket sheet indicates that the notice of appeal was filed before the disposition of a timely tolling motion. Therefore the effectiveness of the notice is suspended until the motion(s) is/are disposed of. See Fed.R.App.P. 4(a)(4).

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Liz McDonald/wl/404-335-6187

c: District Court Clerk

This court awaits district court's ruling on docs. Nos. 106, 107 & 108.

c: District Court Clerk
Encl.

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

March 15, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-16248-HH John Nunley v. Banjo Mtn., Inc.
DC DKT NO.: 01-00110CV-RWS-2

THIS APPEAL IS GOVERNED BY MORE STRINGENT PROCEDURES FOR REQUESTING EXTENSIONS OF TIME TO FILE BRIEFS AND RECORD EXCERPTS IN CIVIL APPEALS. NEW PROCEDURES ALSO PROVIDE FOR DISMISSAL WITHOUT FURTHER NOTICE IN CIVIL APPEALS WHEN A BRIEF OR RECORD EXCERPTS IS NOT FILED OR CORRECTED WITHIN THE TIME PERMITTED. PLEASE SEE ENCLOSED NOTICE AND REVISED RULES. Eleventh Circuit Rule 31-1 requires that APPELLANT'S BRIEF AND RECORD EXCERPTS BE SERVED AND FILED WITHIN FORTY (40) DAYS FROM March 13, 2002.

The above date is the date a pending motion or matter was ruled on or resolved and the appeal was allowed to proceed, as provided by 11th Cir. R. 31-1(c).

THIS IS THE ONLY NOTICE YOU WILL RECEIVE CONCERNING THE DUE DATE FOR FILING BRIEFS. See Fed.R.App.P. 28, 30, 31 and 32, and the corresponding circuit rules, for further information on preparing briefs and record excerpts. Motions for extensions of time to file a brief are frowned upon by the court.

A current copy of the district court docket sheet, which shows papers comprising the record, is available from the district court clerk. Counsel or parties may also review the record information of referencing the record. Upon notice that all appellees' briefs have been filed, the record will be promptly sent to this office by the district court clerk.

Sincerely,
THOMAS K. KAHN, Clerk
Reply To: Joseph Caruso (404) 335-6177
Encl.

The following notice, U.S. GPO:2000-634-243/20103, Rev.: 9/2000, was part of the enclosure to this memo, BR-1 (1-200), of 3/15/02 and stated the following:

NOTICE

Amendments to the Eleventh Circuit Rules took effect on April 1, 1999. In particular, with respect to all appeals docketed in the court of appeals after April 1, 1999, 11th Cir. R. 12-1 and 11th Cir. R. 31-1 provide that the time for filing appellant's brief begins to run on the date the court reporter files the transcript or, if no transcript is to be prepared, on the date the appeal is docketed by the court of appeals. In addition, 11th Cir. R. 31-1(d) provides that the time for filing the appellee's brief runs from the time of service of appellant's brief, even appellant's brief is tendered for filing out of time or exceeds page or type-volume limitations.

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

April 05, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-16248-HH John Nunley v. Banjo Mtn., Inc.
DC DKT NO.: 01-00110CV-RWS-2

Please take notice that the following motion has been filed:

Motion to Supplement the Record and Stay the Appeal

Any response which a party wishes to file must be received by this office on or before April 16, 2002, after which the motion and the response will be forwarded to the court for ruling without oral argument.

Copies of the court's decision will be sent to all counsel and to prose parties.

Counsel filing the referenced motion should forward a Certificate of Interested Persons and Corporate Disclosure Statement as required by 11th Cir. R. 27-1(a) within the designated time period.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Joseph Caruso (404) 335-6177

Appendix D: Memo dated 4/5/02

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

April 05, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-16248-HH

John Nunley v. Banjo Mountain, Inc.

DC DKT NO.: 01-00110-CV-RWS-2

The following action has been taken in the referenced case:

The enclosed order has been ENTERED.

Sincerely,

THOMAS K. KAHN, Clerk

Reply to: Joseph Caruso (404) 335-6177

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16248-HH

JOHN NUNLEY,
VERONICA NUNLEY,

ET AL., Plaintiffs-Appellants,

versus

BANJO MOUNTAIN, INC.,
As a Corporation with Faye Grindley, George Grindley, Glen Grindley and others, in their corporate, professional and personal capacities,
CLARK AND CLARK, P.C.,
With Herman Clark, David L Clark, Barry A. Lee,
ET AL., Defendants-Appellees.

On Appeal from the United States District Court for
the
Northern District of Georgia

BEFORE: BARKETT, MARCUS, AND WILSON, Circuit Judges.

BY THE COURT:

Appellants' "Emergency Motion for Immediate Stay or Injunction Pending Appeal" is DENIED.

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

April 24, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-16248-HH

John Nunley v. Banjo Mountain, Inc.

DC DKT NO.: 01-00110-CV-RWS-2

The following action has been taken in the referenced case:

The enclosed order has been ENTERED.

Sincerely,

THOMAS K. KAHN, Clerk

Reply to: Joseph Caruso (404) 335-6177

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16248-HH

JOHN NUNLEY,
VERONICA NUNLEY, ET AL.,
Plaintiffs-Appellants,

versus

BANJO MOUNTAIN, INC.,
As a Corporation with Faye Grindley, George Grindley, Glen Grindley and others, in their corporate, professional and personal capacities,
CLARK AND CLARK, P.C.,
With Herman Clark, David I. Clark, Barry A. Lee,
ET AL., Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Georgia

ORDER:

Appellants' "motion for correction of modification of the record . . ." is DENIED WITHOUT PREJUDICE TO RENEWAL subject to the District Court's denial of a similar motion to correct or modify the record now pending before it.

Appellants' "motion to suspend appeal, "which is construed as a motion to stay this appeal pending resolution of the motions pending before the District Court, is GRANTED. Appellants' brief will be due within twenty-one (21) days of the date that the District Court Order resolving their motion to correct or modify the record is entered on that Court's docket.

The motion to bar the Appellants from filing any further motions in this Court, contained in Appellees Gilmer County's. et al., response to Appellants' motions, is DENIED.

Appellees' request to be relieved from the responsibility of responding to any further motions filed by Appellants in this Court, also contained in their response to appellants' motion, is likewise DENIED. The Court notes that, unless specifically directed by this Court, no party is required to respond to any motion. See e.g. Federal Rule of Appellate Procedure 27 (a) (3).

/s/Ed Carnes

UNITED STATES CIRCUIT JUDGE

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

April 29, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-16248-HH John Nunley v. Banjo Mtn., Inc.
DC DKT NO.: 01-00110CV-RWS-2

The following action has been taken in the referenced case:

APPELLANTS' MOTIONS SERVED ON 4/26/02 ARE BEING RETURNED UNFILED. THE COURT ORDER OF APRIL 24, 2002 HAS MADE THEM UNNECESSARY. APPELLANTS' MOTION MUST NOT EXCEED 20 PAGES.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Joseph Caruso (404) 335-6177

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

May 13, 2002

Luther D. Thomas
Clerk, U.S. District Court
121 Spring Street, Room 201
Gainesville GA 30501

RE: 02-12078-H In Re: John Nunley
DC DKT NO.: 01-00110 CV-RWS-2

The enclosed certified copy of this Court's Order of Dismissal is issued as the mandate of this court. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Please acknowledge receipt by returning the enclosed copy of this letter.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Liz McDonald /wl/ 404-335-6187

Encl.

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 02-12078-H
Dist.Ct. Docket No. 01-00110-CV-RWS-2

IN RE: JOHN NUNLEY, VERONICA NUNLEY,
KIM NUNLEY
Petitioners.

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Georgia

BEFORE: CARNES and HULL, Circuit Judges

BY THE COURT:

John Nunley, Veronica Nunley, and Kim Nunley move to file this mandamus petition, requesting that this Court order the clerk of the district court to make the corrections or modifications to the record, which was certified ready for appeal by the district court on November 19, 2001, and to create a supplemental record to be certified to include pleadings filed by the Nunleys following the date the record was certified.

Mandamus relief is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." Jackson v. Motel 6 Multipurpose, Inc., 130F.3d 999, 1004 (11th Cir. 1997). In this case, the Nunleys have two motions pending before the district court in which they have requested the same relief as they have requested in their mandamus petition. As the Nunleys may still receive the relief sought in the district court, they have adequate alternative means of relief and have not shown a clear and indisputable right to mandamus relief. Accordingly, their petition is DISMISSED.

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

May 20, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-12002-H John Nunley v. Banjo Mtn., Inc.
DC DKT NO.: 01-00110CV-RWS-2

The enclosed certified copy of this Court's Order of Dismissal is issued as the mandate of this court. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, " a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Please acknowledge receipt by returning the enclosed copy of this letter.

Sincerely,
THOMAS K. KAHN, Clerk
Reply To: Liz McDonald/wl/404-335-6187
Encl.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 02-12002-H
Dist.Ct. Docket No. 01-00110-CV-RWS-2

In Re: John Nunley, Veronica Nunley, Kim Nunley, Petitioners.

On Petition for Writ of Mandamus to United States
District Court for the Northern District of Georgia

BEFORE: TJOFLAT and BIRCH, Circuit Judges
BY THE COURT:

John Nunley, and Kim Nunley ("the Nunleys") filed this pro se mandamus petition, requesting that this Court order reporter for their civil case in the Northern District of Georgia to complete the record on appeal by attaching the reporter's original notes or other original recording of a motions gearing held in that case to the transcript of the hearing, and certifying the notes and transcript as correct.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." Jackson v. Motel 6 Multipurpose, Inc., 130F.3d 999,1004(11th Cir. 1997). The petitioner has the burden of showing that the claimed right to issuance of the writ is clear and indisputable. In re lopez-Ludis, 113 F.3d 1187, 1188 (11th Cir. 1997). In this case, the Nunleys have not met their burden of showing a clear and indisputable right to mandamus relief, because (1) they have not shown that they are entitled to the relief they seek, because the record on appeal is complete without the court reporter's original shorthand notes, see F.R.A.P. 10(a), and (2) they have an adequate alternative remedy available: they can move the district court for modification of the record, as they have done, see F.R.A.P. 10(e)(1) (providing that any dispute as to the accuracy of the record must be submitted to and settled by the district court). Accordingly, this petition is DENIED.

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

June 12, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 02-12002-H John Nunley v. Banjo Mtn., Inc.

DC DKT NO.: 01-00110-CV-RWS-2

The papers you recently submitted to this office are being returned for the reason stated.

Your motion for reconsideration is being returned to you unfiled. 11th Circuit Rule 27-2 provides that motions for reconsideration must be filed within 21 days of the entry of an order.

Sincerely,

THOMAS K. KAHN, Clerk

Reply to: Liz McDonald (404) 335-6187

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

June 21, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 02-12078-H

John Nunley v. Banjo Mountain, Inc.

DC DKT NO.: 01-00110-CV-RWS-2

The following action has been taken in the referenced case:

The enclosed order has been ENTERED.
THIS APPEAL HAVING BEEN PREVIOUSLY DISMISSED, NO FURTHER ACTION WILL BE TAKEN BY THIS COURT.

Sincerely,

THOMAS K. KAHN, Clerk

Reply to: Liz McDonald (404) 335-6187

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-12078-H

Dist.Ct. Docket No. 01-00110-CV-RWS-2

IN RE: JOHN NUNLEY,
VERONICA NUNLEY,
KIM NUNLEY Petitioners.

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Georgia

BEFORE: CARNES and HULL, Circuit Judges

BY THE COURT:

John Nunley, Veronica Nunley, and Kim Nunley petition this Court for reconsideration of our may 13, 2002, order dismissing their petition for writ of mandamus. A party seeking rehearing or reconsideration must specifically allege any point of law or fact that this Court overlooked or misapprehended. See Fed.R.App.P. 40. The Nunleys, however, merely make broad, unsupported statements that they are entitled to mandamus relief and do not allege that this Court overlooked or misapprehended any point of fact or law. Accordingly, their motion for reconsideration is DENIED.

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

July 17, 2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 01-16248-HH John Nunley v. Banjo Mtn., Inc.
DC DKT NO.: 01-00110CV-RWS-2

Please take notice that the following motion has been filed:

Motion to Stay Appeal

Any response which a party wishes to file must be received by this office on or before July 29, 2002, after which the motion and the response will be forwarded to the court for ruling without oral argument.

Copies of the court's decision will be sent to all counsel and to pro se parties.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Joseph Caruso (404) 335-6177

Appendix L: Memo dated 7/17/02

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16248-HH

FILED - U.S. COURT
OF APPEALS
ELEVENTH CIRCUIT
August 5, 2002
Thomas K. Kahn, Clerk

JOHN NUNLEY,
VERONICA NUNLEY,
ET AL., Plaintiffs-Appellants,

versus

BANJO MOUNTAIN,
INC., As a Corporation
with Faye Grindley, George Grindley,
Glen Grindley and others, in their corporate,
professional and personal capacities,
CLARK AND CLARK, P.C.,
With Herman Clark, David I. Clark, Barry A. Lee,
ET AL., Defendants-Appellees.

On Appeal from the United States
District Court for the Northern District of Georgia

ORDER:

Appellants' "emergency motion for immediate suspension of appeal" is DENIED.

Appellants' brief is due within fourteen (14) days of the date of this Order.

/s/____________________
United States Circuit Judge

(On 8/8/02, Petitioners spoke to Appellate Clerk Joe Caruso who informed the Petitioners that Judge Gerald B. Tjoflat was the United States Circuit Judge who signed this order.)

Appendix LL: Order of 8/5/02

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN NUNLEY, VERONICA
NUNLEY, and KIM NUNLEY

Plaintiffs, CIVIL ACTION

v. NO. 2:01-CV-0110-RWS

BANJO MOUNTAIN INC., et al.,

Defendants.

ORDER

Now before the Court for consideration are Defendant Brenda Weaver's Motion To Dismiss [2-1], Defendants Gilmer County, Glenda Sue Johnson, Rayburn Smith, Charles Fowler, and Steve Ralston's Motion To Dismiss [3-1], Defendant Edwin Marger's Motion To Dismiss [4-1], Defendant Ronald Armstrong's Motion To Dismiss [5-1], Defendant's Bobby C. Milam's Motion To Dismiss [6-1], Defendant Banjo Mountain, Inc.'s Motion To Dismiss [8-1], Defendant George M. Weaver's Motion To Dismiss [9-1], Defendant Michael McKinney's Motion To Dismiss [10-1], Plaintiffs' Motion To Extend Time [11-1], Defendant Clark & Clark, P.C.'s Motion To Dismiss [12-1], Defendant Lee Taylor's Motion To Dismiss [13-1], Defendant Clark & Clark, P.C.'s Motion for Oral Hearing on Motion To Dismiss [24-1], Defendant Edwin Marger's Motion for Hearing on Motion To Dismiss [25-1], Defendants Gilmer County, Glenda Sue Johnson, Rayburn Smith, Charles Fowler, and Steve Ralston's Motion for Oral Hearing on Motion To Dismiss [26-1], Defendant William Reilly's Motion To Dismiss [28-1], Plaintiffs' Motion for Court To Advise Plaintiffs on Proper Procedure for Plaintiffs to Follow in Obtaining Court Documents from Attorneys

Representing Defendant Attorney Taylor [29-1], Plaintiffs' Motion To Dismiss All of Defendants' Motions and Notices Without Any Further Consideration or Hearing [30-1], Plaintiffs' Motion for Use of Plaintiffs' Own Electronic Recording Equipment, or in the Alternative, Motion to Utilize a Court Reporter [31-1], Plaintiffs' Motion for Certificate of Interested Person for All Attorneys of Record [32-1], Plaintiffs; Motion for Default Judgment Against Defendant William Reilly [33-1], Plaintiffs' Motion for Summary Judgment Against Defendant William Reilly [34-1], Plaintiffs' Motion To Strike Defendant William Reilly's Motion To Dismiss [35-1], Plaintiffs Motion for Leave and Extension of Time To Amend Plaintiff's Complaint [37-1], Defendant Gilmer County Glenda Sue Johnson, Rayburn Smith, Charles Fowler, and Steve Ralston's Motion To Dismiss Plaintiffs Amended Complaint [40-1], Defendant Clark and Clark, P.C.'s Motion for Sanctions Pursuant to Rule 11 [41-1], Plaintiffs' Motion for Court Instructions [45-1].

Plaintiffs' Motion for Enlargement of Time to Respond to "Notice to Respond to Summary Judgment Motion" [54-1], Plaintiffs' Motion for Enlargement of Time for Plaintiffs to Submit Pleadings for Sanctions and Attorney Discipline Concerning Certain Defendants [55-1], Plaintiffs; Motion for Default Judgment Against Defendant Lee Taylor [56-1], Plaintiffs' Motion for Leave to Conduct Discovery pursuant to FRCP Rules 26 through 37 and FRCP Rule 11 [66-1], Plaintiffs' Motion in Opposition to and for Relief from Court's "Notice to Respond to Summary Judgment Motion" Dated 8/23/01 [71-1], Defendant Banjo Mountain, Inc.'s Motion to Dismiss Plaintiffs' Amended Complaint [76-1], Defendant George M. Weaver's Motion To Stay Discovery [85-1], Defendant Clark and Clark, P.C.'s Motion To Stay Proceedings [88-1], Plaintiffs' Motion To Extend Time to Effectuate Service of Summons and Complaint[92-1], Plaintiffs' Motion for Court To Issue Summons for Service on the Defendants[92-2], and Plaintiffs' Motion for Enlargement of Time for Plaintiffs

To Reply To Defendants' Motions and Pleadings [93-1].

After conducting a hearing on the issues in the case, reviewing the record, and considering the parties' arguments, the Court enters the following Order.

Factual Background

Plaintiffs own property in Gilmer County, and they claim ownership to Banjo Mountain Road, a road that runs contiguous to their property. Plaintiffs requested that Gilmer County adopt and maintain the road, and Gilmer County then added the road into the county road system. In 1995, Banjo Mountain, Inc., a corporation that owned property adjacent to Plaintiffs property, filed suit against Plaintiffs in Gilmer County Superior Court, seeking to enjoin Plaintiffs from blocking access to Banjo Mountain Road. The judge granted Banjo Mountain Inc.'s motion for summary judgment and awarded Banjo Mountain attorneys' fees.

In the case at bar, Plaintiffs allege that the representatives of the corporation, the attorneys, the judges, the county commissioners, and other county employees were involved in a conspiracy to confiscate Plaintiffs' land and deprive Plaintiffs of their constitutional rights. Plaintiffs contend Defendants have violated " many complex constitutional and statutory provisions," and plaintiffs cite the "common law and torts generally and specifically," the Hobbes Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), and the Civil Rights Act as federal laws under which they seek relief. (Compl.¶ 190-94.)

Discussion

A. Plaintiffs' Motions for the Court's Advice

Because the Court must remain impartial throughout the proceedings and cannot assist the parties in prosecuting claims or defenses, the Court hereby DENIES Plaintiffs' Motion for Court To Advise Plaintiffs on Proper Procedure for Plaintiffs To Follow in Obtaining Court Documents from Attorneys

Representing Defendant Attorney Taylor [29-1] and Plaintiffs' Motion for Court Instructions [45-1].

B. Motions for Hearing

Defendants Clark and Clark, P.C., Edwin Marger, Gilmer County, Glenda Sue Johnson, Rayburn Smith, Charles Fowler, and Steve Ralston have requested a hearing on their motions to dismiss. The Court GRANTS the motions, and the hearing was held on Wednesday, October 3, 2001, at the United States Courthouse in Gainesville, Georgia.

C. Defendants' Motions To Dismiss

Defendants move to dismiss Plaintiffs' Original Complaint and Amended Complaint on three grounds: see footnote 1. (1) the Court lacks subject matter jurisdiction in the case, (2) Plaintiffs' Complaint fails to state a claim upon which relief can be granted, and (3) Plaintiffs did not properly serve Defendants with the summons and complaint as required by Federal Rule of Civil Procedure 4. Since the question of whether each Defendant was properly served a summon and complaint is fact-specific, the Court addressed only the first two grounds for dismissal in the October 3rd hearing and will only consider the first two grounds in this Order.

1. Lack of Subject Matter Jurisdiction

After reviewing the Original Complaint, the Amended Complaint, and the parties' arguments during the hearing on October 3rd, the court finds that Plaintiffs seek relief from an adverse judgment by the Gilmer County Superior Court. Plaintiffs contend that their constitutional right have been violated by an alleged conspiracy of the parties, attorneys, and judges involved in that case. In essence, Plaintiffs are attacking the validity of the state trial court's decision and asking the Court to review the state court judgment and to analyze the actions (or inactions) of the persons involved in that case. Plaintiffs could have appealed the Georgia appellate courts, then to the United States Supreme Court pursuant to 28 U.S.C. § 1257(3), but they failed to do so. Instead, Plaintiffs seek review of their claims in federal district court under 42 U.S.C.§ 1983; however, Supreme Court and Eleventh Circuit precedent clearly prohibits such review. See Footnote 2.

This Court lacks subject matter jurisdiction in the instant action; a federal district court may not review a state court judgment even upon a claim that the judgment violates the United States Constitution or the Georgia Constitution. Hagerty v. Succession of Clement, 749 F.2d 217, 220 (5th Cir. 1984), cert. denied Hagerty v. Keller, 474 U.S. 968, 106 S. Ct. 333, 88 L.Ed.2d 317 (1985); Claughton v. Donner, 771 F. Supp. 1200, 1204 (S.D. Fla. 1991). To the extent that there was any constitutional error in the Gilmer County Superior Court's decision the sole recourse for Plaintiffs was an appeal to the state appellate courts, whose decision may be reviewed by the United States Supreme Court, not a federal district court. See Dist. Of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 103 S.Ct. 1303, 75 L.Ed. 2d 206 (1983); Staley v. Ledbetter, 837 F.2D 1016, 1017-18 (11th Cir. 1988); Hagerty, 749 F.2d at 220 (stating that "a Plaintiff may not seek reversal of state court judgement simply by casting his complaint in the form of a civil rights action") (citations omitted). Plaintiffs will not suffer irreparable harm by continuing to litigate in the state courts and by pursuing an appeal of the Gilmer County Superior Court's judgment to the Georgia Court of Appeals. See Boyle v. Landry, 401 U.S. 77, 91 S.Ct. 758,27 L.Ed. 2d 696 (1971). Although the constitutional claims presented by Plaintiffs to this Court are not identical to the claims litigated at the state court level, they are "inextricably intertwined" with the state court's proceedings and ultimate judgment; therefore, this Court cannot properly review the state court decision Hagerty, 749 F.2d at 220 (citing Feldman, 460 U.S. at 483 n. 16). Accordingly, because this Court lacks subject matter jurisdiction, the Court must dismiss plaintiffs' case.

2. Failure To State a Claim

Although the Court can dismiss the case solely on the ground that the Court lacks subject matter jurisdiction, Plaintiffs' suit is also subject to dismissal for failure to state a claim upon which relief can be granted. Although Plaintiffs do not clearly identify cognizable legal claims in the Original Complaint or Amended Complaint, based on the facts alleged in the complaint and Plaintiffs' presentation of supporting facts at the hearing, the Court discerns only two potential claims in the case: a RICO claim and a claim under the Due Process Clause and/or Equal Protection Clause of the Fourteenth Amendment brought pursuant to 42 U.S.C. § 1983.

"A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 102, 2 L.Ed. 2d 80 (1957). A complaint is also subject to dismissal under Rule 12(b)(6) when its allegations, on their face, show that an affirmative defense bars recovery on the claim. See Marsh v. Butler County, Ala., 2001 WL 1135264, at *1 (11th Cir. 2001) (citing Quiller v. Barclays Am./Credit, Inc., 727 F.2d 1067, 1069 (11th Cir. 1984). The Supreme Court and the Eleventh Circuit have held that courts should apply the affirmative defense of absolute or qualified immunity at the earliest possible stage in litigation because the defense is immunity to the entire lawsuit. See Hunter v. Bryant, 502 U.S. 224, 112 S. Ct. 534, 536, 116 L. Ed. 2d 589 (1991); Marsh, 2001 WL 1135264, at *1. Once a defendant asserts the affirmative defense of immunity to the suit, the Court looks to the plaintiff's allegations in the complaint. "Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery." Marsh, 2001 WL 1135264, at *1 (quoting Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 2806, 2815, 86

L.Ed. 2d 411 (1985)); see also Behrens v. Pelletier, 516 U.S. 299, 116 S.Ct. 834, 840, 133 L. Ed. 2d 773 (1996) ("At the [12 (b)(6)] stage, it is the defendant's conduct as alleged in their complaint that is scrutinized for 'objective legal reasonableness.'").

With regard to the RICO claim, Plaintiffs do not sufficiently claim any sort of conspiracy involving all Defendants that was designed to deprive them of their constitutional rights. Plaintiffs' allegations are wholly conclusory and re not accompanied by facts, which if proven would entitle them to relief. Thus, the RICO claim would be subject to dismissal.

To sustain an action under 42U.S.C § 1983, plaintiffs must prove that Defendants, acting under color of state law, deprived them of a right secured by the Constitution and laws of the United States. Adickes v. S.H. Kress & Co.,398 U.S. 144, 150, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). Section 1983 does not reach purely private conduct. Dist. Of Columbia v. Carter, 409 U.S. 418, 424, 93 S.Ct. 602, 34 L.Ed. 2d 613 (1973). The Court's review of the record clearly indicates that most of the defendants (the private attorneys, the corporation, and the corporate representatives) are private parties who were not acting under color of state law. Because private parties are not subject to a suit under section 1983, Plaintiffs' claims against private party Defendants are subject to dismissal under Federal Rules Civil Procedure 12(b)(6).

In addition, Plaintiffs assert their section 1983 claim against state trial judges, Brenda Weaver and Bobby C. Milam. The United States Supreme Court has clearly established that the assertion of judicial immunity is an absolute defense in a section 1983 suit challenging a court's decision. Dennis v. Sparks, 449 U.S. 24, 27, 101 S.Ct. 183,66 L. Ed. 2d 185 (1980). Judicial officers are immune from liability for damages resulting from their activities in the course and scope of their judicial function. See Pierson v. Ray, 386 U.S. 547, 554, 87 S.Ct. 1213, 18 L.Ed. 2d 288 (1967); Watts v. Graves, 720 F.2D 1416, 1420 (5th Cir. 1983). Judge Weaver and Judge Milam, as Gilmer County Superior Court judges, are parties to this lawsuit only because they exercised judicial discretion in a case properly before the Gilmer County Superior Court. Therefore, the claims against Judge Weaver and Judge Milam are subject to dismissal under Rule 12(b)(6) because Plaintiffs' allegations show that the affirmative defenses of absolute judicial immunity bars recovery on the claims.

Finally, the remaining Defendants (the county attorneys, the county commissioners, and other county employees) are presumably state actors. However, " government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Crawford-El v. Britton, 523 U.S. 574, 588, 118 S.Ct. 1584, 140 L. Ed. 2d 759 (1998). Even if they were acting under color of state law, the government officials would be entitled to qualified immunity, and Plaintiffs have stated neither a claim of violation of clearly established law nor a violation of a discretionary function that , if proven would entitle Plaintiffs to relief from these state actors. Thus, the claims against the county Defendants are subject to dismissal under Rule 12(d)(6) because Plaintiffs' allegations show that the affirmative defense of qualified immunity bars recovery on the claims.

In sum, this Court lacks subject matter jurisdiction over the instant lawsuit; moreover, Plaintiffs fail to state a claim upon which relief may be granted. Accordingly, the Court GRANTS all defendants' motions to dismiss, and the Court dismisses Plaintiffs' action under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

D. Plaintiffs' Various Motions

Plaintiffs have filed several motions, and the Court ruled on many of these motions during the hearing on October 3rd. To memorialize the rulings, the Court hereby GRANTS Plaintiffs' Motion for Certificate of Interested Persons for All Attorneys of record [32-1]. See Footnote 3. The Court GRANTS in part and DENIES in part Plaintiffs' Motion for Use of Plaintiffs' Own Electronic Recording Equipment, or in the Alternative, Motion To Utilize a Court Reporter [31-1]. The Court grants the motion to the extent that Plaintiffs request a court reporter, and a court reporter was present during the hearing on October 3rd. The Court denies the motion to the extent that Plaintiffs request to use their own electronic recording equipment.

The Court DENIES Plaintiffs' Motion To Dismiss All of Defendants' Motions and Notice Without Any Further Consideration or Hearing [30-1] and Plaintiffs' Motion To Strike Defendant William Reilly's Motion to Dismiss [35-1]. The Court will treat these motions as responses to Defendants' motions. The Court DENIES AS MOOT Plaintiffs' Motion To Extend Time To Hear Issue of Serving Summons and Complaint [11-1]. Based on the Court's ruling on Defendants' motions to dismiss, the Court DENIES the following motions: Plaintiffs Motion for Default Judgment Against Defendant William Reilly [33-1], Plaintiffs' Motion for Summary Judgment Against Defendant William Reilly [34-1], Plaintiffs Motion for Leave and Extension of Time to Amend Plaintiff's Complaint [37-1], Plaintiffs' Motion for Enlargement of Time to Respond to "Notice to Respond to Summary Judgment Motion" [54-1], Plaintiffs' Motion for Enlargement of Time for Plaintiffs to Submit Pleadings for Sanctions and Attorney Discipline Concerning Certain Defendants [55-1], Plaintiffs Motion for Default Judgment Against Defendant Lee Taylor [56-1], Plaintiffs' Motion for Leave to Conduct Discovery Pursuant to FRCP Rules 26 through 37 and FRCP Rule 11 [66-1], Plaintiffs' Motion in Opposition to and for Relief from Court's "Notice to Respond to Summary Judgment Motion" Dated 8/23/01 [71-1], Plaintiffs' Motion to Extend

Time to Effectuate Service of Summons and Complaint[92-1], Plaintiffs' Motion for Court to Issue Summons for Service on the Defendants[92-2], and Plaintiffs' Motion for Enlargement of Time for Plaintiffs to Reply to Defendants' Motions and Pleadings [93-1].

E . Defendants' Others Motion

Because the Court Grants Defendants' motions to dismiss and thereby dismisses the entire case, the Court DENIES AS MOOT Defendant George M Weaver's Motion To Stay Discovery [85-1] and Defendant Clark and Clark, P.C.'s Motion To Stay Proceedings [88-1]. In consideration of Plaintiffs' pro se status and because this action should be concluded in this Court by this order of dismissal, the Court DENIES Defendant Clark and Clark, P.C.'s Motion for Sanctions Pursuant to Rule 11 [41-1]. The Defendants shall have right to refile said motion if this Order does not conclude this proceeding.

Conclusion

The following motions are hereby GRANTED: Defendant Brenda Weaver's Motion To Dismiss [2-1], Defendants Gilmer County, Glenda Sue Johnson, Rayburn Smith, Charles Fowler, and Steve Ralston's Motion To Dismiss [3-1], Defendant Edwin Marger's Motion to Dismiss [4-1], Defendant Ronald Armstrong's Motion to Dismiss [5-1], Defendant's Bobby C. Milam's Motion To Dismiss [6-1], Defendant Banjo Mountain, Inc.'s Motion To Dismiss [8-1], Defendant George M. Weaver's Motion To Dismiss [9-1], Defendant Michael McKinney's Motion To Dismiss [10-1], Defendant Clark & Clark, P.C.'s Motion to Dismiss [12-1], Defendant Lee Taylor's Motion to Dismiss [13-1], Defendant Clark & Clark, P.C.'s Motion for Oral Hearing on Motion to Dismiss [24-1], Defendant Edwin Marger's Motion for Hearing on Motion to Dismiss [25-1], Defendants Gilmer County, Glenda Sue Johnson, Rayburn Smith, Charles Fowler, and Steve Ralston's Motion for Oral Hearing on Motion to Dismiss [26-1], Defendant William Reilly's Motion to Dismiss [28-1], Plaintiffs' Motion for Certificate of Interested Person for All

Attorneys of Record [32-1], Defendant Gilmer County Glenda Sue Johnson, Rayburn Smith, Charles Fowler, and Steve Ralston's Motion to Dismiss Plaintiffs Amended Complaint [40-1], and Defendant Banjo Mountain, Inc.'s Motion to Dismiss Plaintiffs' Amended Complaint [76-1].

Plaintiffs' Motion for Use of Plaintiffs' Own Electronic Recording Equipment, or in the Alternative, Motion to Utilize a Court Reporter [31-1] is hereby GRANTED in part and DENIED in part.

Plaintiffs' Motion to Extend Time To Hear Issue of Serving Summons and Complaint [11-1], Defendant George M. Weaver's Motion to Stay Discovery [85-1], Defendant Clark and Clark, P.C.'s Motion to Stay Proceedings [88-1] are hereby DENIED AS MOOT.

The following motions are hereby DENIED : Plaintiffs' Motion for Court to Advise Plaintiffs on Proper Procedure for Plaintiffs to Follow in Obtaining Court Documents from Attorneys Representing Defendant Attorney Taylor [29-1], Plaintiffs' Motion to Dismiss All of Defendants' Motions and Notices Without Any Further Consideration or Hearing [30-1], Plaintiffs; Motion for Default Judgment Against Defendant William Reilly [33-1], Plaintiffs' Motion for Summary Judgment Against Defendant William Reilly [34-1], Plaintiffs' Motion to Strike Defendant William Reilly's Motion to Dismiss [35-1], Plaintiffs Motion for Leave and Extension of Time to Amend Plaintiff's Complaint [37-1], Defendant Clark and Clark, P.C.'s Motion for Sanctions Pursuant to Rule 11 [41-1], Plaintiffs' Motion for Court Instructions [45-1], Plaintiffs' Motion for Enlargement of Time to Respond to "Notice to Respond to Summary Judgment Motion" [54-1], Plaintiffs' Motion for Enlargement of Time for Plaintiffs to Submit Pleadings for Sanctions and Attorney Discipline Concerning Certain Defendants [55-1], Plaintiffs; Motion for Default Judgment Against Defendant Lee Taylor [56-1], Plaintiffs' Motion for Leave to Conduct Discovery Pursuant to FRCP Rules

26 through 37 and FRCP Rule 11 [66-1], Plaintiffs' Motion in Opposition to and for Relief from Court's "Notice to Respond to Summary Judgment Motion Dated 8/23/01 [71-1], Plaintiffs' Motion to Extend Time to Effectuate Service of Summons and Complaint[92-1], Plaintiffs' Motion for Court to Issue Summons for Service on the Defendants[92-2], and Plaintiffs' Motion for Enlargement of Time for Plaintiffs to Reply to Defendants' Motions and Pleadings [93-1]. SO ORDERED, this 11th day of October, 2001.

"s/ Richard W. Story"
RICHARD W. STORY
United States District Judge

Footnote 1: Defendants filed separate motions to dismissal although some of the motions only raise one or two of these grounds for dismissal, in deference to the Plaintiffs' pro se status, the Court will address all three grounds for dismissal.

Footnote 2: The United States Court of Appeals for the Eleventh Circuit adopted as binding precedent the decisions of the United States of Appeals for the Fifth Circuit handed down prior to September 30, 1981. Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (1981).

Footnote 3: The Court notes that most, if not all, of the Defendants have already filed certificates of interested persons, as directed by the Court at the hearing on October 3, 2001.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

John Nunley, Veronica	:
Nunley, and Kim Nunley,:	
Plaintiffs,	:CIVIL ACTION FILE
	:
vs.	:NO. 2:01-cv-110-RWS
	:
Banjo Mtn. Inc., et al.,	:
Defendants	

JUDGMENT

This action having come before the court, Honorable Richard W. Story, United States District Judge, for consideration of defendants' motions to dismiss, and the court having granted said motions, it is

Ordered and Adjudged that the plaintiffs take nothing; that the defendants recover their costs of this action, and the action be, and the same hereby, is dismissed.

Dated at Gainesville, Georgia, this 15th day of October, 2001.

LUTHER D. THOMAS
CLERK OF COURT

By: "s/Stacey Kemp"
Stacey Kemp / Deputy Clerk

Prepared, Filed, and Entered
In the Clerk's Office
October 15, 2001
Luther D. Thomas
Clerk of Court
By: "s/Stacey Kemp"
Stacey Kemp, Deputy Clerk

United States District Court
Northern District of Georgia
Room 201, Federal Building
121 Spring Street, SE
Gainesville, Georgia 30501

November 19, 2001

USDC Civil Action No. 2:01-CV-110-RWS
USCA 01-16248-H

In Reference: JOHN NUNLEY, et al v. BANJO MOUNTAIN, INC., et al

Certificate of Readiness of Record on Appeal

Pursuant to Fed.R.App.P. 11(c), the Clerk of the District Court for the Northern District of Georgia hereby certifies that, as shown on the enclosed index, the record is complete for the purposes of the appeal. The record (including the transcript or parts thereof designated for inclusion and all necessary exhibits) consists of :

5 Volume(s) of pleadings (vol. 1-5)
_ Volume(s) of depositions
1 Volume(s) of transcripts (vol. 6)
_ Volume(s) of exhibits
_ Other:

Sincerely,
Luther D. Thomas
Clerk of Court

"s/ Stacey Kemp"
By: Stacey Kemp, Deputy Clerk

Enclosures

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN NUNLEY, VERONICA
NUNLEY, and KIM NUNLEY,
Plaintiffs,

CIVIL ACTION
NO. 2:01-CV-0110-RWS

v.

BANJO MOUNTAIN, INC.,et al.,
Defendants,

ORDER

This case is before the Court for consideration of Defendants Clark and Clark, P.C. with Herman Clark, David I. Clark, Barry A. Lee, Ashley R. Miller, Avery Dimmock, Jr., and Others, In Their Corporate, Professional, and Personal Capacities' ("Clark and Clark") Motion for Reconsideration of Order Denying Motion for Sanctions [106-1] and Plaintiffs' Motion for Relief from Order and Judgement [107-1]. After considering the entire record, the Court enters the following Order.

In their motion, Plaintiffs seek relief from the Judgment of this Court pursuant to Federal Rule of Civil Procedure 60. In support of their motion, Plaintiffs filed a 75-page brief. Prior to filing the brief, Plaintiffs did not seek leave of Court to exceed the page limit for briefs under the local rules of this Court. See L.R.7.1(B). However the Court will once again defer to Plaintiffs' *pro se* status and consider their brief in its entirety. Having reviewed the entire brief, the Court finds that the majority of the brief addresses issues such as service of process and failure to file certificates of interested persons which no bearing on the Order from which Plaintiffs seek relief. By Order [101-1] entered October 12, 2001, the court dismissed Plaintiffs' case due to lack of subject matter jurisdiction and because the Complaint failed to state a claim for which relief could be granted. Plaintiffs do eventually address these issues in their brief. However, they make no arguments which have not previously been made or which would justify relief pursuant to Rule 60. Therefore, Plaintiff's Motion for Relief from Order and Judgment [107-1] is hereby DENIED.

In their Motion to Reconsider, Clark and Clark seek reconsideration of that portion of the October 12th Order in which the Court denied their request for sanctions pursuant to Rule 11. In the October 12th Order, the court deferred to Plaintiffs' *pro se* status and denied the request for sanctions. However, the Order also provided that the Defendants would have the right to refile the motion if that Order did not conclude the case. Based upon events occurring subsequent to the entry of that Order, the Court finds that it would be manifest injustice not to impose sanctions against Plaintiffs. In addition to the grounds set out in Clark and Clark's original motion, the filing of Plaintiffs' Motion for Relief with a 75-page brief evidences Plaintiffs' bad faith and intent to harass Defendants and subject them to unreasonable expense. Therefore, Defendants' motion for Reconsideration [106-1] is hereby GRANTED, and their Motion for Sanctions [41-1] is hereby GRANTED. Clark and Clark shall submit to the Court within ten (10) days of the entry of this Order a statement of expenses which they seek to recover as sanctions against Plaintiffs. Plaintiffs shall have five (5) days after the filing of the request to file any objections thereto.

SO ORDERED, this 14th day of December, 2001.

"/s/ Richard W. Story"

RICHARD W. STORY
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN NUNLEY,
VERONICA NUNLEY, and
KIM NUNLEY
Plaintiffs,

CIVIL ACTION
NO. 2:01-CV-0110-RWS

v.

BANJO MOUNTAIN, INC. et al.,
Defendants.

ORDER

By Order entered December 14, 2001 [124-1], the Court granted Clark & Clark's Motion for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure and directed Clark & Clark to submit a statement of expenses to the Court. The Court has reviewed the Statement of Expenses and the documents filed in opposition by Plaintiffs.

The Court finds that hourly rates of $110 for Robert S. Huestis and $175 for James T McDonald are reasonable. The Court further finds that the total hours expended by the attorneys are reasonable and are not the result of undue duplication of work. Mr. Huestis has billed for 41.30 hours and Mr. McDonald has billed for 21.90 hours. Based on this attorney time alone, Clark & Clark would be entitled to an award of $8,375.50. However, Clark & Clark only requests attorney's fees in the amount of their insurance deductible, $5,000. The Court finds that an award of fees in said amount is reasonable. Therefore, Plaintiffs are hereby ORDERED to pay to Clark & Clark the sum of $5,000 for expenses incurred in this litigation.

SO ORDERED, this 13th day of March, 2002.

"s/ Richard W. Story"
RICHARD W. STORY
United States District judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

John Nunley, Veronica Nunley, and Kim Nunley Plaintiffs,	Civil Action No. 2:01-CV-0110-RWS
v.	
Banjo Mountain, Inc., et al., Defendants.	

ORDER

This case is before the Court for consideration of Plaintiffs' Motion for Correction or Modification of the Record [138-1]. After reviewing the motion, the Court enters the following Order.

Plaintiffs' request that the Civil Cover Sheet filed by them on June 18, 2001 be forwarded to the Court of Appeals. If this document has not been included in the record, the Clerk is directed to forward the same to the Court of Appeals. Plaintiffs also seek to have original notes, tape recordings, etc. of hearings submitted to the Court of Appeals. These are not items which Plaintiffs are entitled to have sent to the Court of Appeals. However, any transcripts which have been requested and prepared should be sent to the Court of Appeals. Therefore, to the extent that any transcripts have been filed which have not been forwarded to the Court of Appeals, the Clerk is hereby directed to forward those transcripts.

Plaintiffs also wish to have Certificates of Interested Persons forwarded to the Court of Appeals. To the extent that any such Certificates have been filed with the Court and have not been forwarded, the Clerk is hereby directed to forward same to the Court of Appeals.

Finally, Plaintiffs seek to have numerous additional documents forwarded without identifying those specific documents. Based upon this lack of specificity, the Court is unable to grant any relief concerning this request. Therefore it is DENIED.

SO ORDERED, this 27th day of June, 2002.

_"/s/Richard w. Story"_____
RICHARD W. STORY
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

John Nunley, Veronica Nunley and Kim Nunley Plaintiffs,	Civil Action No.: 2:01-CV-0110-RWS
v.	
Banjo Mountain, Inc., et al., Defendants	

ORDER

Now before the Court for consideration of Plaintiff-Appellants' Emergency Motion for Immediate Stay or Injunction Pending Appeal [140-1], Plaintiffs' Actual and Constructive Notice of Intent To Sue Sharon Upchurch, Official Court Reporter, and Demand for Release of Original Shorthand Notes of Other Original Records for Plaintiffs' Immediate Review [147-1], and Plaintiffs' Actual and Constructive Notice of Intent To Sue District Court Clerks Stacy Kemp and Debra James Harton and Demand for Release of Original Shorthand Notes or other Original Records for Plaintiffs; Immediate Review [148-1]. After reviewing the record and considering Plaintiffs; arguments, the Court enters the following Order.

A. Plaintiffs' Motion for Immediate Stay of Injunction Pending Appeal [140-1]

First, Plaintiffs request that the Court stay execution of its March 13, 2002, Order requiring Plaintiffs to pay Clark & Clark sanctions in the amount of $5,000. Plaintiffs offer to post a bond to secure the stay. With deference to Plaintiffs' *pro se* status, the Court interprets this request as a motion under Federal Rule of Civil Procedure 62(d) for a stay of judgement pending appeal. Under Rule 62, [w]hen an appeal is taken[,] the appellant by giving a supersedeas bond may obtain a stay . . .The stay is effective when the supersedeas bond is approved by the court." Fd.R.Civ.P. 62(d). Thus, a party appealing an order of the district court involving a money judgment is entitled to a stay of that judgment as matter of right upon posting of a supersedeas bond. The purpose of a supersedeas bond is to preserve *statue quo* while protecting non-appealing party's rights pending appeal. Poplar Grove Planting & Ref. Co., Inc. V. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91 (5th Cir. 1979). See footnote 1 In this case, Plaintiffs are appealing the Court's March 13th Order imposing sanctions of Plaintiffs, and Plaintiffs ask this Court to stay enforcement of the judgment against them pending disposition on appeal. The Court hereby fixes a $5,000 bond as the total security required for supersedeas. Therefore, in order to be entitled to a stay as a matter of right, Plaintiffs must file the $5,000 bond and a renewed motion for stay with the Court; then, the Court will stay execution of the judgment pending disposition of the appeal. Accordingly, to the extent that Plaintiffs seek a stay of judgment pending appeal, Plaintiffs' motion is hereby DENIED WITH A RIGHT TO REFILE.

Second, Plaintiffs' also seek injunctive relief from this Court. Plaintiffs seek to enjoin Defendants (Appellees) and Mr. and Mrs. Valley (who are not parties to this action) from interfering with Plaintiffs; possession of the property that is the subject of this dispute. In this case, Plaintiffs have filed an appeal seeking review of the Court's orders. Although the district court retains jurisdiction over any issues relation to enforcement of a judgment or supersedeas bond after the filing of an appeal, jurisdiction passes to the appellate court, and the district court cannot thereafter consider the merits of the case without leave of the court of appeals. See Turner v. HMH Pub. Co., 328 F.2d 136 (5th Cir. 1964). Therefore, because Plaintiffs' appeal has divested the Court of jurisdiction over the subject matter of the case, the Court must DENY Plaintiffs' motion to the extent that they seed injunctive relief.

B. Plaintiffs' Demand for Release of Original Shorthand Notes [147-1and 148-1]

Next, Plaintiffs claim that the transcript of the hearing held on October 3, 2001, is inaccurate and that the record on appeal is therefore incomplete. Plaintiffs seed to review and obtain copies of the original stenotype notes taken by the Official Court Reporter at the hearing and the court reporter's official certification that the transcript is correct and complete.

Pursuant to 28 U.S.C.§ 753(b), the court reporter shall record verbatim each session of the court by shorthand or other approved device. The court reporter shall attach her official certificate to the original shorthand notes and "promptly file them withe the clerk who shall preserve them in the public records of the court for not less than ten years." These original notes shall be open to inspection in the office of the clerk during office hours by any person without charge. See 28 U.S.C. §753(b).

The Court's docket reflects that the Official Court Reporter's stenotype notes of the October 3rd hearing, with the attached certification, were filed with the Clerk on October 3, 2001, and the official transcript, with the attached certification, was filed on October 19, 2001. Because the stenotype notes are part of the official record in this case, Plaintiffs are entitled to inspect these notes in the office of the clerk during office hours; therefore, the Court GRANTS this part of Plaintiffs' motions. However, Plaintiffs cannot obtain a photocopy of the notes because only the Official Court Reporter's certified transcript is the official record in this case. See footnote 2. Thus, to the extent that Plaintiffs request copies of the stenotype notes, the Court hereby DENIES the motions.

Furthermore, Plaintiffs request the qualifications of the court reporter, Sharon upchurch, and the deputy clerks of the Gainesville Division, Stacey Kemp and

Debra James Harton. Because their qualifications are not in question in this case, the Court hereby DENIES the motions to the extent that Plaintiffs request the qualifications of these court employees.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellants' Emergency Motion for Immediate Stay or Injunction Pending Appeal [140-1] is hereby DENIED. Plaintiffs' Actual and Constructive Notice of Intent To Sue Sharon Upchurch, Official Court Reporter, and Demand for Release of Original Shorthand Notes of Other Original Records for Plaintiffs' Immediate Review [147-1], and Plaintiffs' Actual and Constructive Notice of Intent To Sue District Court Clerks Stacy Kemp and Debra James Harton and Demand for Release of Original Shorthand Notes or other Original Records for Plaintiffs; Immediate Review [148-1] are hereby GRANTED in part and DENIED in part..

SO ORDERED, this 24th day of July, 2002.
"/s/ Richard W. Story"
RICHARD W. STORY
United States District Judge

Footnote 1. The United States Court of Appeals for the Eleventh circuit adopted as binding precedent the decisions of the United States Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981. Bonner v. City of Prichard, Ala., 661 F.2d 1206,1207 (Cir. 1981).

Footnote 2. The United States Code further provides:
The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcript of the proceedings of the court shall be other individual designed to produce the record.
42 U.S.C. § 753 (b).

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

JOHN NUNLEY
VERONICA NUNLEY,
KIM NUNLEY, Plaintiffs
v.
BANJO MOUNTAIN,
INC., et al., Defendants

Civil Action
No. 2:01-CV-0110-RWS

FILED IN CLERK'S
OFFICE U.S.D.C.
GAINESVILLE
AUG - 9 2002
BY /S/ Deputy Clerk

ORDER

This case is before the Court for consideration of Plaintiffs' - Appellants' Motion for Relief with Findings of Fact and Conclusions of Law with Certainty in Writing from Order Dated June 27, 2002 [150-1]. After reviewing the record, the Court enters the following Order.

Plaintiffs continue to seek to have the record on appeal modified by adding the notes of the court reporter. These notes are written in shorthand and would be of no value to the appellate court. If Plaintiffs believe that the transcript of the proceedings before this Court are in error, Plaintiffs must file a motion pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure to seek a correction of the record. Plaintiffs continue to insist upon the Court Reporter's notes being attached to the record but have offered no justification for same. Plaintiffs have failed to point out any specific alleged error in the transcript of the proceedings in this case. Therefore, the present motion [150-1] is hereby DENIED.

SO ORDERED, this 9th day of August, 2002.

RICHARD W. STORY
United States District Judge

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution for the United States of America

Art. 1. § 9: No bill of attainder or ex post facto Law shall be passed.

Art. III. § 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Art. III. § 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.

Art. IV, § 4: The United States shall guarantee to every State in the Union a Republican Form of Government.

Amend. I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amend. V: . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amend. IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amend X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

CONSTITUTIONAL PROVISIONS INVOLVED
Constitution for the State of Georgia

Art. I, § I, ¶ I. Life, liberty, and property. No person shall be deprived of life, liberty, or property except by due process of law.

Art. I, § I, ¶ II. Protection to person and property; equal protection. Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

Art. I, § I, ¶ VI. Libel. In all civil or criminal actions for libel, the truth may be given in evidence; and, if it shall appear to the trier of fact that the matter charged as libelous is true, the party shall be discharged.

Art. I, § I, ¶ IX. Right to assemble and petition. The people have the right to assemble peaceably for their common good and to apply by petition or remonstrance to those vested with the powers of government for redress of grievances.

Art. I, § I, ¶ X. Bill of attainder; ex post facto laws; and retroactive laws. No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed.

Art. I, § I, ¶ XI. Right to trial by jury; number of jurors; selection and compensation of jurors. (a) The right to trial by jury shall remain violate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party.

Art. I, § I, ¶ XII. Right to the courts. No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state.

Art. I, § I, ¶ XIV. Benefit of counsel; accusation; list of witnesses; compulsory process. Every person charged with an offense against the laws of this state shall have the privilege and benefit of counsel; shall be furnished with a copy of the accusation or indictment and, on demand, with a list of the witnesses on whose testimony such charge is founded; shall have compulsory process to obtain the testimony of that person's own witnesses; and shall be confronted with the witnesses testifying against such person.

Art. I, § I, ¶ XXVIII. Enumeration of rights not denial of others. The enumeration of rights herein contained as a part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed.

Art. I, § II, ¶ III. Separation of legislative, judicial, and executive powers. The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.

Art. I, § III, ¶ I. Eminent domain. (a) Except as otherwise provided in this Paragraph, private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid. (b) When private property is taken or damaged by the state or the counties or municipalities of the state for public road or street purposes, or for public transportation purposes, or for any other public purposes as determined by the General Assembly, just and adequate compensation therefor need not be paid until the same has been finally fixed and determined as provided by law; but such just and adequate compensation shall then be paid in preference to all other obligations except bonded indebtedness.

STATUTORY PROVISIONS INVOLVED

1. RULES ENABLING ACT OF 1988

Public Law 100-702, November 19, 1988, 102 Stat 4648 (See Title IV, Sec. 401, §§ 2072, 2074)

SEC. 401. Rules Enabling Act Amendments.

(a) In General . - Chapter 131 is amended by striking out section 2072 and inserting in lieu thereof the following:

§ 2072. Rules of procedure and evidence; power to prescribe

"(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

"(b) Such rules shall not abridge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

"§ 2074. Rules of procedure and evidence; submission to Congress; effective date

"(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule on such proceedings would not be feasible or would work injustice, in which event the former rule applies.

"(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress."

2. Federal Rules of Evidence of 1975
   P.L. 93-595, January 2, 1975, 88 Stat 1926.

3. Pub. L. 773, June 25, 1948, ch. 646, 62 Stat 929 (Title 28, ch. 83, § 1291.)

   § 1291. Final decisions of district courts
   The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the supreme Court.

4. Pub. L. 773, June 25, 1948, ch. 646, 62 Stat. 928 (Title 28, ch. 81, § 1254)
   Pub. L. 100-352, § 2(a), (b), 102 Stat. 662.

   § 1254. Courts of Appeals; certiorari; certified questions.
   (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
   (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

5. 28 U.S.C. §2101(e). An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

6. 28 U.S.C. §1291. Final decisions of district courts. The courts of appeals (other than the United States Court of appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

7. 28 U.S.C. §1254. Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
   (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

8. 28 U.S.C. § 2071. Rule-making power generally. (a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title."

9. 28 U.S.C. § 2072. Rules of procedure and evidence; power to prescribe. "(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United Sates District Courts (including proceedings before magistrates thereof) and courts of appeals. (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."

10. 28 U.S.C. § 2074. Rules of procedure and evidence; submission to Congress; effective date
    (a) "The Supreme Court shall transmit to the

Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule.

Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule on such proceedings would not be feasible or would work injustice, in which event the former rule applies.

"(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress."

RULEMAKING AUTHORITY

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"§ 2074. Rules of procedure and evidence; submission to Congress; effective date
"(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule on such proceedings would not be feasible or would work injustice, in which event the former rule applies.
"(b) Any such rule creating, abolishing, or

modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress."

2. FRAP Rule 1. Scope of Rules; Title (a) Rules Do Not Affect Jurisdiction. "These rules do not extend or limit the jurisdiction of the courts of appeals."

3. FRAP Rule 47. Local Rules by Courts of Appeal. (a) Local rules. (1) "Each court of appeals . . . may make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with–but not duplicative of–Acts of Congress and rules adopted under 28 U.S.C. § 2072 . . . (2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of nonwillful failure to comply with the requirement. (b) Procedure When There Is No Controlling Law. A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement."

4. FRAP Rule 47. Advisory Committee's Note. 1967 Adoption. "This rule continues the authority now vested in individual courts of appeals by 28 U.S.C. § 2071 to make rules consistent with rules of practice and procedure promulgated by the Supreme Court. 1995 Amendments. Subdivision (a). This rule is amended to require that a generally applicable

direction regarding practice before a court of appeals must be in a local rule rather than an internal operating procedure or *some other general directive. It is the intent of this rule that a local rule may not bar any practice that these rules explicitly or implicitly permit.* Subdivision (b) allows a court of appeals to regulate practice in an individual case by entry of an order in the case. *The amendment also reflects the requirement that local rules be consistent not only with the national rules but also with Acts of Congress.* The amendment also states that local rules should not repeat national rules and Acts of Congress . . . Paragraph (2) is new. Its aim is to protect against loss of rights in the enforcement of local rules relating to matters of form. The prescription of paragraph (2) is narrowly drawn - covering only violations that are not willful and only those involving local rules directed to matters of form. It does not limit the court's power to impose substantive penalties upon a party if it or its attorney stubbornly or repeatedly violates a local rule, even one involving merely a matter of form. *Nor does it affect the court's power to enforce local rules that involve more than mere matters of form.* Subdivision (b). The rule provides flexibility to the court in regulating practice in a particular case when there is no controlling law. Specifically, *it permits the court to regulate practice in any manner consistent with Acts of Congress, with rules adopted under 28 U.S.C. § 2072, and with the circuit's local rules.* The amendment to this rule disapproves imposing any sanction or other disadvantage on a person for noncompliance with such a directive, unless the alleged violator has been furnished in a particular case with *actual notice of the requirement. There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular court unless the party or attorney has actual notice of those requirements.*" See the Federal Civil Judicial Procedure and Rules, 2002 Edition, Rules of

Appellate Procedure, Advisory Committee Notes, page 524. Emphasis added.

5. Rules of the United States Court of Appeals for the Eleventh Circuit (cite as 11th Cir. R.) EFFECTIVE JANUARY 1, 2002. "Both the court of appeals . . . and Federal Rules of Appellate Procedure 47, and the judicial council of the circuit . . . have certain responsibilities for the effective and expeditious administration of justice within the circuit. Contained herein are rules relevant to the court of appeals adopted by the court and by action of the judicial council. The United States Court of Appeals for the Eleventh Circuit has adopted these rules pursuant to Federal Rules of Appellate Procedure (FRAP) 47. They supplement the provisions of law and FRAP. To properly proceed in this court, counsel should read and follow FRAP, these rules, and the court's Internal Operating Procedures (IOP) which describe the internal workings of the clerk's office and the court. Although there are necessary exceptions, an effort has been made by the court not to duplicate in the Circuit Rules or the IOP's either FRAP or each other. Circuit rules not inconsistent with FRAP govern. These rules neither extend nor limit the jurisdiction of the court." This information is provided by the appellate court and precedes the table of contents as an introduction.

6. FRCP Rule 1. Scope and Purpose of Rules.

   These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

7. L.R. 1.1, NDGa. Title: Effective Date; Definitions; Compliance and Construction.

C. Scope of Rules; Construction. These rules supplement the Federal Rules of Civil Procedure and shall be construed so as to be consistent with those Rules and to promote the just, efficient, and economical determination of every action and proceeding except that the rules shall not apply to those proceedings where they may be inconsistent with rules or provisions of law specifically applicable thereto.

8. FRCP Rule 82. Jurisdiction and Venue Unaffected. These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein. An admiralty or maritime claim within the meaning of Rule 9(h) shall not be treated as a civil action for the purpose of Title 28, U.S.C., §§ 1391-1392.

9. FRCP Rule 82. Advisory Committee Notes, 1993 Amendments.

   The purpose of this revision, adding the words "and administered" to the second sentence, is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

10. FRCP 83. Rules by District Courts; Judge's Directives. (a) Local Rules
    (1) Each district court, acting by a majority of its district judges, may, after having appropriate public notice and an opportunity for comment, make and amend rules governing its practice. A local rule shall be consistent with- but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §§ 2072 and 2075, and shall conform to

any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district
court and abrogated by the judicial council of the circuit. Copies of rules and amendments shall, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

11. L.R. 1.1, NDGa. Title: Effective Date; Definitions; Compliance and Construction
    C. Scope of Rules; Construction. These rules supplement the Federal Rules of Civil Procedure and shall be construed so as to be consistent with those Rules and to promote the just, efficient, and economical determination of every action and proceeding except that the rules shall not apply to those proceedings where they may be inconsistent with rules or provisions of law specifically applicable thereto.

12. Federal Rules of Evidence Rule 102. Purpose and Construction.
    These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

FEDERAL RULES OF APPELLATE PROCEDURE AMENDMENTS RECEIVED TO JANUARY 28, 2002 WITH RULES OF THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT EFFECTIVE JANUARY 1, 2002.

FRAP Rule 1. Scope of Rules; Title (a) Rules Do Not Affect Jurisdiction. "These rules do not extend or limit the jurisdiction of the courts of appeals."

FRAP RULE 3. Appeal as of Right- How Taken.
(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record - excluding the appellant's - or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries - and any later docker entries - to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

11th Cir. Rule 3 I.O.P.- Payment of Fees.

When the notice of appeals is filed in the district court, counsel must pay to the district court clerk, pursuant to FRAP 3(e), the court of appeals docketing fee of $100 required by 28 U.S.C.§ 1913, plus the $5 district court filing fee required by 28 U.S.C. § 1917. Upon receipt of a copy of a notice of appeal the clerk of the court of appeals will transmit to counsel a notice advising of other requirements of the rules. See FRAP 13, 15, and 21 for information on payment of fees for Tax Court appeals, petitions for review of agency orders or writs of mandamus or other writs.

FRAP RULE 4. Appeal as of Right - When Taken.

(a) Appeal in a Civil Case.

  (1) Time for Filing a Notice of Appeal.

    (A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after judgment or order appealed from is entered.

(4) Effect of a Motion on a Notice of Appeal.

  (A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

    (i) for judgment under 50(b);

    (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

    (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

    (iv) to alter or amend the judgment under Rule 59;

    (v) for a new trial under Rule 59; or

    (vi)for relief under rule 60 if the motion is filed no later than 10 days (computed using Federal Rules of Civil Procedure 6(a)) after the judgement is entered.

  (B) (i) If a party files a notice of appeal after the court announces or enters a judgement - but before it disposes of any motion listed in Rule 4(a)4(A) - the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

Advisory Committee Notes to FRAP Rule 4. 1979 Amendment Subsection (a)(4). The proposed amendment would make it clear that after the filing of the specified post trial motions, a notice of appeal should await disposition of the motion. Since the proposed amendments to Rules 3, 20, and 12 contemplate that immediately upon the filing of the notice of appeal the fees will be paid and the case docketed in the court fo appeals, and the steps toward its disposition set in motion, it would be undesirable to proceed with the appeal while the district court has before it a motion the granting of which would vacate or alter judgment appealed from.

Advisory Committee Notes to FRAP Rule 4. 1993 Amendment. The 1979 Amendment of this paragraph created a trap for an unsuspecting litigant who files a notice of appeal before a post-trial motion, or while a post-trial motion is pending.

FRAP RULE 10. The Record on Appeal.

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) Appellant's Duty to Order. Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)4(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) Partial Transcript. Unless the entire transcript is ordered:

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues, if the statement is truthful, it - together with any additions that the district court may consider necessary to a full presentation of the issues on appeal - must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must by submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;
(B) by the district court before or after the record has been forwarded; or
(C) by the court of appeals.

11th Cir. Rule 10-1 Ordering the Transcript - Duties of Appellant and Appellee. Appellant's written order for a transcript or certification that no transcript will be ordered, as required by FRAP 10(b), shall be on a form prescribed by the court of appeals. Counsel and pro se parties shall file the original with the district court clerk, and send copies to the appropriate court reporter(s), the clerk of the court of appeals, and all parties, in conformance with instructions included on the form. The form must be filed and copies sent as indicated above within 10 days after filing the notice of appeal or after entry of an order disposing of the last timely motion of a type specified in FRAP 4(a)(4).

11th Cir. IOP Ordering the Transcript. The transcript order form prescribed by the court of appeals may be obtained from the district court. Financial arrangements for payment of the costs of the transcript which are satisfactory to the reporter must be made before the transcript order is complete and signed by appellant.

Advisory Committee Notes to FRAP Rule 10. 1995 Amendment, Subsection (b)(1) . . . The purpose of this amendment is to suspend the 10-day period for ordering a transcript . . . and a notice of appeal is suspended under Rule 4(a)(4). The 10-day period set forth in the first sentence of this rule begins to run whne the order disposing of the last such postjudgment motions is entered.

FRAP RULE 11. Forwarding the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 10(b) and must fo whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and District Clerk.

(1) Reporters Duty to Prepare and File a Transcript. The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript. The reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed to the circuit clerk.

(2) District Clerk's Duty to Forward: When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual

bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

11th Cir. R. 11-2 Certification and Transmission of Record - Duties of District Court Clerk. The clerk of the district court is responsible for determining when the record on appeal is complete for purposes of appeal. Upon completion of the record the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers. The clerk of the district court shall certify to the clerk of this court that the record (including the transcript or parts thereof designated for inclusion, and all necessary exhibits) is complete for purposes of appeal. Unless the required certification can be transmitted to the clerk of this court within 14 days from the filing by appellant of a certificate that no transcript is necessary or 14 days after the filing of the transcript of trial proceedings if one has been ordered, whichever is later, the clerk of the district court shall advise the clerk of this court of the reasons for delay and request additional time for filing the required certification. Upon notification from this court that the brief of the appellee has been filed, the clerk of the district court shall forthwith transmit the complete original record.

11th Cir. IOP - 2 Preparation of Record; Duties of District Court Clerk. At the time that the record is complete for purposes of appeal and before transmitting certification that the record is complete the district court will assemble the record into one or more volumes, and identify by a separate document number each filing contained therein. Each volume of the record should generally contain less than 250 pages. The district court docket sheet shall be marked to identify by number the

volume into which documents have been placed, and the cover of each volume of the record shall indicate the volume number and the document numbers of the first and last document contained therein (e.g.Vol. 2, Documents 26 - 49). The district court docket sheet, so marked, will be included in the record and provided to all parities to facilitate citation to the original record by reference to the file copies maintained by the parties. Transcripts will be sequentially arranged in separate numbered volumes, with volume numbers noted on the docket sheet index. In civil appeals, including bankruptcy and prisoner (civil and habeas) appeals, standard commercially - available indexing tabs or their equivalent which extend beyond the edge of the page shall be affixed to the first page of orders and of significant filings in the record to identify and assist in locating the papers. Tabs should be visible and staggered in sequence from top to bottom along the right-hand side. Tab numbers should correspond to the document numbers assigned to the district court.
Advisory Committee Notes for FRAP Rule 11, 1979 Amendment, Present Rule 11(b) provides that the record shall be transmitteed when it is "complete for the purposes of the appeal.". . .The record is complete for the purposes of the appeal when it contains the originaal papers on file in the clerk's office, . . .

FRAP RULE 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record
(a) Docketing the Appeal. Upon receiving the copy of the notice appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district court action and must identify the appellant, adding the appellant's name if necessary.
(c) Filing a Record, Partial Record, of Certificate. Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, circuit clerk must file it and immediately notify all parties of the filing date.

11th Cir R. 12-1 Filing the Record. In an appeal from a district court in which a transcript is ordered, the record is deemed completed and filed on the date the court reporter files the transcript with the district court. In an appeal from a district court in which there was no hearing below (including an appeal from summary judgment), or all necessary transcripts are already on file, or a transcript is not ordered, the record is deemed completed and filed on the date the appeal is docketed in th court of appeals pursuant to FRAP 12(a). The provisions of this rule also apply to the review of a Tax Court decision. [See 11th Cir. R. 31-1 for the time for serving and filing briefs.]

11th Cir. IOP-1. Docketing an Appeal. Appeals are immediately docketed upon receipt of the notice of appeal and district court docket entries. A general docket number is assigned and all counsel and pro se parties are so advised. Failure to pay the docket fee does not prevent the appeal from being docketed but is grounds for dismissal of the appeal by the clerk under the authority of 11th Cir. R. 42-1.

Advisory Committee Notes to FRAP Rule 12. 1967 Adoption Subdivision (a). All that is involved in the docketing of an appeal is the payment of the docket fee.
1979 Amendments Subdivision (a). The proposed amendment takes the docketing out of the hands of the appellant . . . the notice of appeal is filed . . . upon receipt of a copy of the notice of appeal and of the docket entries . . . under Rule 3(d).

FRAP RULE 31. Serving and Filing Briefs
(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve

and file a reply brief within 14 days after service of the appellee's brief but a repl brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within a extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

11th Cir. R. 31-1 Briefs - Time for Serving and Filing.

(a) Briefing Schedule. Except as otherwise provided herein, the appellant shall serve and file a brief within 40 days after the date on which the record is deemed filed as provided by 11th Cir.R. 12-1. The appellee shall serve and file a brief within 30 days after service of the brief of the last appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the last appellee.

(c) Pending Motions. If any of the following motions or matters are pending in either the district court or the court of appeals at the time the appeal is docketed in the court of appeals or thereafter, the appellant (or appellant /cross-appellee) shall serve and file a brief within 40 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appeal is allowed to proceed, or within 40 days after the date on which the record is deemed filed as provided by 11th Cir.R. 12-1, whichever is later:

- Motion to proceed In Forma Pauperis
- Motion for a Certificate of Appealability or Certificate of Probable Cause
- Motion of a type specified in FRAP 4(a)(4)(A)
- Motion of a type specified in FRAP 4(b)(3)(A)
- Assessment of fees pursuant to the Prisoner Litigation Reform Act
- Appointment and/or withdrawal of counsel

- Request for transcript at government expense
- Designation by appellee of additional parts of the proceedings to be ordered from the court reporter, order by appellee of such parts, or motion by appellee for an order requiring appellant to order such parts, as provided by FRAP 10 (b)(3)(B) and (C)
- Motion to consolidate appeals, provided that such motion is filed on or before the date the appellant's brief is due in any of the appeals which are the subject of such motion.

If any of the foregoing motions or matters are pending in either the district court or the court of appeals after the appellant (or appellant /cross-appellee) has served and filed a brief, the appellee (or appellee /cross-appellant) shall serve and file a brief within 30 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appal is allowed to proceed, or within 30 days after the date on which the supplemental record is deemed filed as provided by 11th Cir. R. 12-1, whichever is later.

11th Cir. Rule 31 IOP - 1. Briefing Schedule. The clerk's office will send counsel and pro se parties a letter confirming the due date for filing appellant's brief consistent with the provisions of 11th Cir.R. 12-1 and 11th Cir. R. 31-1, but delay in or failure to receive such a letter does not affect the obligation of counsel and pro se parties to file the brief within the time permitted by 11th Cir. R. 31-1. The clerk's office will also advise counsel and ro se parties of the rules and procedures governing the form of briefs.

Advisory Committee Notes to FRAP Rule 31. 1970 Amendments. The time prescribed by Rule 31(a) for preparing briefs . . . should not be disturbed.

FRAP 42. Voluntary Dismissal.

(a) Dismissal in the District Court. Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

11th Cir. R. 42-1 Dismissal of appeals.

(a) Dismissal by Appellant of Petitioner. Such motion to dismiss shall indicate whether the dismissal is sought with or without prejudice. If an appellant or petitioner files an unopposed motion to dismiss an appeal or agency review proceeding without prejudice, the clerk may dismiss the appeal or petition and in such circumstances will issue a copy of the order as and for the mandate.

(b) Dismissal for Failure to Prosecute. Except as otherwise provide for briefs and record excerpts in civil appeals in 11th Cir. R. 42-2 and 42-3, when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of 14 days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been remedied by filing the brief or other required papers and a motion to file documents out of time. Within that 14-day notice period a party in default must seek leave of the court, by appropriate motion, to file documents out of time or otherwise remedy the default. Failure to seek such relief by filing timely an appropriate motion will result in dismissal for want of prosecution. The clerk shall not dismiss an appeal during the pendency of a timely filed motion to file documents out of time or otherwise remedy the default which is accompanied by the brief or other required papers, but if the court denies such leave the clerk shall dismiss the appeal forthwith.

11th Cir. R. 42-2 Dismissal in a Civil Appeal for Appellant's Failure to File Brief of Record Excerpts by Due Date.

(c) Dismissal Without Further Notice. When an appellant has failed to file the brief or record excerpts by the due date as established by 11th Cir. R. 31-1 and set forth in the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties.

FRAP RULE 44 Case Involving a Constitutional Question When the United States Is Not a Party.

If a party questions the constitutionality of an Act of Congress in a proceeding which the United States or its agencies, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

FRAP RULE 47. Local Rules by Courts of Appeals.

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend

rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with – but not duplicative of – Acts of Congress and rules adopted under 28 U.S.C § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Court a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

FEDERAL RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS, AMENDMENTS RECEIVED TO JANUARY 28, 2002, WITH UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA LOCAL RULES INCLUDING AMENDMENTS TO FEDERAL COURT RULES RECEIVED THROUGH SEPTEMBER 15, 2001, WITH ADVISORY COMMITTEE NOTES

FRCP Rule 1. Scope and Purpose of Rules.

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

L.R. 1.1, NDGa. Title: Effective Date; Definitions; Compliance and Construction.

C. Scope of Rules; Construction. These ryles supplement the Federal Rules of Civil Procedure and shall be construed so as to be consistent with those Rules and to promote the just, efficient, and economical determination of every action and proceeding except that the rules shall not apply to those proceedings where they may be inconsistent with rules or provisions of law specifically applicable thereto.

L.R. 79.1, NDGa. PLEADINGS AND EXHIBITS; APPEAL RECORDS; CLOSED FILES.

H. Appeal Records. LR 79.1E does not prohibit the forwarding of original records to the Court of

Appeals in accordance with Fed.Rs.App.P. 10 and 11. Pursuant to the provisions of Rule 11(c) of those rules, the parties may request this court to retain the appeal record temporarily for use by the parties in preparing appellate papers.

FRCP Rule 82. Jurisdiction and Venue Unaffected.

These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein. An admiralty or maritime claim within the meaning of Rule 9(h) shall not be treated as a civil action for the purpose of Title 28, U.S.C., §§ 1391-1392.

Advisory Committee Notes, 1993 Amendments.

The purpose of this revision, adding the words "and administered" to the second sentence, is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

FRCP Rule 83. Rules by District Courts; Judge's Directives.

(a) Local Rules

(1) Each district court, acting by a majority of its district judges, may, after having appropriate public notice and an opportunity for comment, make and amend rules governing its practice. A local rule shall be consistent with- but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §§ 2072 and 2075, and shall conform to any uniform numbering system prescribed by the Judicial Conference

of the United States. A local rule takes effect on the date specified by the district court and abrogated by the judicial council of the circuit. Copies of rules and amendments shall, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

FRCP Rule 84. Forms.

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

FEDERAL RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATES PUB. L. 93-595, §1, JANUARY 2, 1975, 88 STAT. 1926 AMENDMENTS RECEIVED TO JANUARY 28, 2002

ARTICLE I. GENERAL PROVISIONS

Rule 102. Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103. Rulings on Evidence

(a) Effect of Erroneous Ruling.— Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection.— In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of abjection, if the specific ground was not apparent from the context; or

(2) Offer of prof.—In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling.— the court may ad any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury.— in jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain Error.— nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Rule 101. Scope

These rules govern proceedings in the courts of the united States and before United States magistrates, to the extent and with the exceptions stated in rule 1101.

Rule 102. Purpose and Construction
Rule 103. Rulings on Evidence
Rule 104. Preliminary Questions
Rule 105. Limited Admissibility
Rule 106. Remainder of or Related Writings or Recorded Statements

Article III. Presumptions in Civil Actions and Proceeding

Rule 301. Presumptions in General in Civil Actions and Proceedings
Rule 302. Applicability of State Law in Civil Actions and Proceedings

Article IV. Relevancy and Its Limits

Rule 401. Definition of "Relevant Evidence"
Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible
Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time
Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions. Other Crimes
Rule 405. Methods of Proving Character
Rule 406. Habit; Routine Practice
Rule 407. Subsequent Remedial Measures
Rule 408. Compromise and Offers to Compromise

Article V. Privileges

Rule 501. General Rule

Article VI. Witnesses

Rule 601. General Rule of Competency
Rule 602. Lack of Personal Knowledge
Rule 603. Oath or Affirmation
Rule 604. Interpreters

Rule 605. Competency of JUDGE AS Witness
Rule 607. Who May Impeach
Rule 608. Evidence of Character and Conduct of Witness
Rule 611. Mode and Order of Interrogation and Presentation
Rule 612. Writing Used To Refresh Memory
Rule 613. Prior Statements of Witnesses

Article VIII. Hearsay

Rule 801. Definitions
Rule 802. Hearsay Rule
Rule 803. Hearsay Exceptions. Availability of Declarant Immaterial
Rule 804. Hearsay Exceptions: Declarant Unavailable
Rule 805. Hearsay Within Hearsay

Article IX. Authentication and Identification

Rule 901. Requirement of Authentication of Identification
Rule 902. Self-Identification

Article X.Contents of Writings, Recordings, and Photographs

Rule 1001. Definitions.
Rule 1002. Requirements of Original
Rule 1003. Admissibility of Duplicates
Rule 1004. Admissibility of Other Evidence of Contents
Rule 1005. Public Records Rule 1006. Summaries
Rule 1007. Testimony of Written Admission of Party
Rule 1008. Function s of Court and Jury

Article XI. Applicability of Rules

Rule 1102. Amendments
Rule 1103. Title

RULES CHART

Comparison of the Federal Rules of Appellate Procedure and the 11th Circuit rules concerning docketing, the record on appeal and setting the filing date for briefs

FEDERAL RULES OF APPELLATE		*11TH CIRCUIT
	11th Cir. R. 31-1(c)	●
	11th Cir. R. 31-1(a)	●
●	FRAP 31(a)(1)	
	11th Cir. R. 12-1	●
●	FRAP 12(c)	
●	FRAP 12(a)	●
●	11th Cir. R. 11-2	●
●	FRAP 11(c)	
●	FRAP 11(b)(2)	
●	FRAP 11(b)(1)	
●	FRAP 11(a)	
●	11th Cir. R. 10-1	●
●	FRAP 10(e)	
●	FRAP 10(d)	
●	FRAP 10(c)	
●	FRAP 10(b)(3)	
●	FRAP 10(b)(2)	
●	FRAP 10(b)(1)	
●	FRAP 10(a)	
●	FRAP 4	
●	FRAP 3(d)	●

*These rules are based upon "Notice," U.S. GPO:2000-634-243/20103, Rev.: 9/2000, page 1 of 6, and based upon Form BR-1(1-2000), memo dated March 15, 2002, from the 11th Circuit Court of Appeals to the parties.

JURISDICTIONAL STATEMENT

On April 24, 2002, the appellate court denied Petitioners' request for correction or modification of the record and suspended Petitioners' appeal giving the Petitioners 21 days to file their brief after district court had resolved this matter. On June 27, 2002, the district court entered its order denying Petitioners' request to modify or correct the record making Petitioners' brief in appellate court due by July 21st. On July 12th, Petitioners filed an FRCP Rule 60(b) motion under FRAP Rule 4(a)(4)(A) in district court.

Due to the unusual circumstances that have arisen in Petitioners' case and due to the structure of the local rules and internal operating procedures of the appellate court, it is unclear as to whether or not appellate court and district court adhere to FRAP Rules 3, 4(a)(4)(A), 10, 11, 12, and Rule 31. Due to the vagueness and uncertainty of the local rules, Petitioners filed an emergency motion for immediate suspension of their appeal on July 15th in appellate court because it was unclear as to whether or not Petitioners' appeal was suspended in appellate court pending a FRAP Rule 4(a)(4)(A) motion in district court or if Petitioners' brief was due by Sunday, July 21st. On August 5, 2002, appellate court denied Petitioners' request for suspension and ordered the Petitioners to file their briefs within 21 days of its August 5th order, that is, by August 19th. FRAP Rule 31 allows Petitioners to file their briefs 40 days from the day the record is filed in the appellate court and not 21 days while a FRAP Rule 4(a)(4)(A) motion is pending. Petitioners' appeal is based upon review of the record on appeal and is not based upon a certified record on appeal dated November 19, 2001. An FRCP Rule 60 motion under FRAP Rule 4(a)(4)(a) automatically suspends appellate court jurisdiction until a final order is issued according to 28 U.S.C. § 1291. 11th Circuit local rules have now adversely affected Petitioners' appeal. The appellate court has no jurisdiction to enter its August 5th order. The appellate court has now invalidated a congressional act

of which the Supreme Court has original jurisdiction. The
Supreme Court has original jurisdiction and discretionary power over rulemaking in the lower courts.

Petitioners filed on April 26th a Certification of Constitutional Questions concerning FRAP Rules 3, 4, 10, 11, 12, and 31, under the provisions of FRAP Rule 44, in the appellate court. On April 29th, the appellate court refused to file Petitioners' constitutional questions stating that the appellate court's order of April 24th made it unnecessary. The appellate court waived its right to constitutional review of its rulemaking authority and left the Petitioners with no other remedy except to file for a Writ of Certiorari under 28 U.S.C. §1254(1). When the Eleventh Circuit Court refuses to address constitutional questions concerning its rulemaking authority, the Petitioners are left with no plain, speedy, or adequate remedy at law. There are no other courts that have jurisdiction to hear the issue of the Eleventh Circuit Court's rulemaking authority and Petitioners are left with no ability to petition for a redress of grievances except to petition the Supreme Court of the United States of America as so authorized in the First Amendment of the U.S. Constitution - the right to petition the Government for redress. For this reason alone, the United States Supreme Court has jurisdiction to review Petitioners' "Writ of Certiorari."

The United States Supreme Court has original jurisdiction to review Petitioners' state and federal constitutional claims under Article III, sections 1 and 2 and Amendment I of the U.S. Constitution. The Eleventh Circuit Court's local rules and internal operating procedures concerning FRAP Rules 3, 10, 11, 12 and 31 violate the Constitution for the United States of America specifically the due process and equal protection clause of the Fifth Amendment, the ex post facto provision of Article 1, Clause 9, and the Constitution for the United States of State of Georgia. The Eleventh Circuit Court's local rules and internal operating procedures have resulted in constitutionally depriving the Petitioners of their rights under the

Constitution for the State of Georgia specifically cited as: GA Const. of 1983, art. I, § 1, ¶ I (see Appendix); art. I, § 1, ¶ II (see Appendix); art. I, § 1, ¶ VI (see Appendix); art. I, § 1, ¶ IX (see Appendix); art. I, § 1, ¶ X (see Appendix); art. I, § 1, ¶ XII (see Appendix); and art. I, § 1, ¶ XXVIII (see Appendix). For these reasons alone and for all of the above-stated reasons, the United States Supreme Court has original jurisdiction to review Petitioners' claims. The Supreme Court has original jurisdiction to review conflicts between federal rules and the Constitution for the State of Georgia and between federal rules and the Constitution for the United States of America.

The Federal Rules of Appellate Procedure are established procedure for all federal courts and is a national policy for the procedure of obtaining justice in federal courts and in many state courts. However, in the 11th Circuit court, local rules and internal operating procedures have been established, implemented, enforced and duplicated - not for national distribution -- but only for the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Northern District of Georgia as local procedure for obtaining justice. Failure of review by the Supreme Court will effectuate severe irreconcilable civil disabilities upon the Petitioners and will essentially bolt the doors to justice for all citizens of the United States. For this reason alone, and for any other reason that the Supreme Court may find just, the Supreme Court has jurisdiction to review Petitioners' claims.

ENTREATY

This is a highly unusual situation involving all three courts, i.e., the district court, the appellate court, and the United States Supreme Court. The United States Supreme Court must hear this case because it involves the delegation of its rulemaking authority to the lower courts. Eleventh Circuit litigants cannot obtain meaningful appellate review due to the lower courts' abuse of rules and internal operating procedures. As a result of this court's rulemaking authority and the delegation thereof, this court has now become responsible for the deprivations created by the local rules and procedures that are enforced in the appellate court and the district court.

We implore you to review this case because private property is being taken unconstitutionally from the citizens of Gilmer County. Gilmer County is currently in a state of dissolution and lawlessness. There is no redress in either state court or federal court leaving the citizens of Gilmer County without redress or remedy. We, like other citizens of Gilmer County, are law abiding citizens and have a deeply held belief that we have a right to life, liberty and the pursuit of happiness. We have worked hard to obtain clear, complete and perfect title to our property. The courts and Gilmer County have not only taken our private property away from us, but have legally enforced Gilmer County's inequitable taxing system. We are forced to continue paying taxes on land the county says we do not own and we are forced to forfeit the taxes we did pay for the past eleven years on property the county says we did not own. Not only are we paying taxes on something the county says we don't own, but our ability to support ourselves as we have been accustomed to has now been terminated. All future developments on our property now belong to a private for-profit corporation while we continue to pay their land taxes. Not only have we lost income, but we are now forced to pay exorbitant amounts in attorney fees and sanctions for exercising our right to redress our government. We have worked hard and studied diligently to protect our rights; yet, we've had our property taken away from us, we continue to pay taxes on property that the county says we don't own, we must find another livelihood, we must pay huge amounts of money attorney fees and sanctions, and we continue to pay the high cost of defense. For all this travailing and suffering, we must now forever remain silent. The courts and local government have forbidden us from ever again seeking relief in court. For the citizens of Gilmer County, the unconstitutional process of taking private property for public use with no policy, procedure or process in place continues unchecked and only increases the state of dissolution and lawlessness.

We implore this court to pass upon our petition because it involves questions of extensive interpretation of rulemaking through public policy and constitutional law that affects the procedure and the manner in which justice is secured throughout these united states. We have never been allowed to adequately and fully present our issues at any time because there are no procedures in place and it appears that there never will be and we object. The citizens of Gilmer County are without any hope of recovering from these deprivations without this court's intervention.

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Editor: George M. Bunch

Thursday March 21, 2002

Tax Assessors' Meeting Draws Interesting Crowd

All that was missing from the Gilmer County Board of Tax Assessors meeting was Julius' "Einzug der Gladiatoren" (Enter the Gladiators), the music that is played when the circus starts.

After accomplishing two short agenda items and an executive session\on behind closed doors, the three remaining board members voted to adjourn, have a bite, and head to the house, Board member Gene Meads had resigned from his position on the board of assessors at the beginning of the meeting.

The meeting saw Gilmer County Commission chairman Rayburn Smith, a woman who has made sexual harassment charges against Meads and her mother, an investigator from the law firm of Meadows, Ichter and Trigg, complete with little video camera, and radio crew from WLJA and a reporter from the Times Courier all show up for what had been leaked as Meads' resignation as chief appraise. A few of the group went home disappointed.

Other action included employees calling their attorneys, who advised the employees to take personal or vacation time and leave the premises immediately.

After the meeting board chairman William (Buddy) Hall was asked by WLJA 's Byron Dobbs, "What's Gene Meads' future? Is he still chief appraiser? Hall an answered,"That's a matter of personnel record and that's private."

Meads said Tuesday morning that he only resigned from the board assessors and nobody had told him he was not the chief appraiser.

Meads resignation letter said, "I began my career in government on July 1. 1950. After much consideration I have decided that it is time for me to retire. I feel that I have much yet to do and deserve to be able to go home and pursue those things in life that are positive e and meaningful.

"From the bottom of my heart I wish everyone well. I will always remember this absolutely beautiful county, its rivers, its mountains, and the kind, friendly citizens.

My resignation from the board of assessors is effective today, Monday March 18, 2002. I do not however resign as chief appraiser of Gilmer County as there remains unfinished work that must be done."

Meads resignation from the board means the board of commissioners will need to appoint two members to have a full board in place. Hall and the two remaining board members, Mary Jones and Don Reil, were going to ask the commissioners to make those appointments as soon as possible.

There was to be a hearing on the status of Meads' position at the Gilmer County courthouse beginning Wednesday, March 20, but according to information received by the Times-Courier, that hearing will not take place.

In the past, assessors 'meetings did not draw spectators and they only included those with tax problems.

At press time Tuesday the assessors had not set the date for their next meeting. It was hoped by some that they were not looking for a carnival barker to sell tickets.

News Editor: Al Summers

Appendix AD, 2 of 2: Times Courier dated 3/21/02

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Editor: George M. Bunch

Thursday April 25, 2002

Tax Assessor Board Not Certified

The present Gilmer County Tax Assessors is not certified to administer the duties of the tax assessors office according to the Georgia Department of Revenue (DOR). According to a DOR official, the only current board member who "may be" certified to the an active role on the board is chairman Ken Kissinger, but his status is unclear because no one at the revenue department knows whether he was appointed to a new term, or complete the remainder of a term created by the mass exodus of three board members two weeks ago.

Board member Billy Masters could possibly be certified after county attorney Herman Clark submits a written request to the DOR asking them for a waiver to review his course work from his board of equalization training to see if it could be used in place of assessor training.

Board member Jeff Holloway is under the most severe scrutiny, having to pass the Appraiser I exam and having to successfully complete the DOR Appraisal Course I before becoming eligible.

One DOR official said that in light of the board not being a " certified board" which could not legally vote on matters, then former chief appraiser Gene Meads "could return to work."

Meads tendered his resignation to the former board of assessors on April 10. His resignation was to take effect June 3. Before action could be taken, three of the members of that board, William, "Buddy" Hall, Dr. Mary Jones, and Don Reil resigned their posts on April 11, citing among other things, interference from the Gilmer County Commission. Masters did not resign.

The commissioners appointed Kissinger and Holloway at their April 11 meeting and the new board met an Saturday, April 13. They accepted Meads' resignation and asked him to vacate his office immediately.

The commissioners may have to appoint one, if not two, more board members in order to have a certified board come digest submission time later this summer. An agenda item for the Thursday night, April 25, commission meeting references "tax board."

The Times- Courier learned Monday, April 22, that the two leading candidates for two of the slots on the board of tax assessors were former tax office employees Rick Pritchett and Tanya Abercrombie, who also once served as the county's chief appraiser.

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Thursday, July 11, 2002.

Assessment Too High

Tuesday morning, I received my assessment notice on my home. To my sunrise, my home of 27 years went from a classification of residential property to commercial property, I no longer have my homestead exemption and the assessed value went from $106,419 to 1,003,997 in 2002.

This is almost 10 times the assessed value of the previous year. This took me to the assessors office to look at the lists of sales, property records, etc. to determine why, and how they come to this assessment..

My home is on 17 acres, the closest comparable property I could find in my area was 15.98 acres. This property (owned by Gold Kist, which is commercial) went from a value of $312,200 in 2001 to a value of $349,563 in 2002. Not much of an increase there is it? My only conclusion thus far (and keep in mind I am still researching this) is that I have been singled out due to my public comments and letters. This in itself is illegal, as well as chancing my property classification from residential to commercial, removing my homestead, not having proper information in the public records room available doer taxpayers to do their research in, and unprofessional attitudes towards requests for information.

I must say that some of the girls in the office of assessor were nice and helpful, but that the one

Appendix AF, 1 of 2: Times Courier dated 7/11/02 employee who was less than professional cast a bad light on the office in general. I would recommend to all county property owners to go th the assessors office and insist on reviewing your current year property record to made sure that they have it valued correctly.

Bess Connor
/Ellijay

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Editor: George M. Bunch

July 18, 2002

In Commissioners' Office Working Conditions Called 'Intolerable'

The working conditions in the Gilmer County Commissioners' office an "intolerable" according to a formal complaint made public during a called commission meeting Monday, July 15.

The complaint signed by six of the seven staff members who work in the office of county commission chairman Rayburn Smith, was presented to commissioner Charles Fowler and Steve Ralston who voted to receive it as a formal; grievance in accordance with the counties personal manual.

Fowler, acting as chairman for the meeting in the absence of Smith, a called the meeting "awkward" in the sense that it was being held to receive a complaint that involved the chairman as the day to day county office. He said the commissioners' office "is in disarray for whatever reason and we need to get to the bottom of this.

Fowler and Ralston each noted that the meeting was asked for by six staff members who filed the complaint which reads, "Please let this serve as a formal complaint of a hostile work environment. The working conditions in the commissioners' office have become intolerable. We ask for your assistance in resolving these matters."

It was signed by Lou Jean Hill, Payroll and county clerk; Jenny Easley, EMS billing and insurance clerk; Elaine Graybeal, accounts payable clerk; Faye Harvey, financial officer; Member Henson, receptionist; and Christy Turner, Right-of-way clerk. A another staff member, Susan Crook, was our of town and not sign the complaint. Fowler said he and Ralston could go into executive session and receive information from staff members individually of collectively. However, doing that could cause a problem with the open meetings law.

Ralston said he wasn't there to hear amu evidence/ "We could hear that and make a decision later. We need to stay with the personnel manual and open meetings law." County attorney Herman Clark said he was "uncomfortable" with Fowler and Ralston hearing the complaint in executive session from the group as a whole. He cautioned the commissioners "not to step outside the steps of the personnel manual" with the complaint. Smith who was not present at the beginning of the meeting but arrived just prior to the vote to adjourn;, was informed of the action taken by Fowler then given a copy of the complaint. He read the complaint and said, "ok"

When asked if he had anything to say, Smith suggested that Fowler and Ralston meet Crook when she returns to work. Ralston and Fowler said that Crook would be given the same opportunity to provide information as the other six staff members. "She can say whatever she wants in the fact finding stage." said Fowler. According to Clark, who read from the personnel manual, Smith will be given a maximum of 20 calendar days in which to answer the complaint.

After that the complaint will be heard by a hearing officer which Clark suggested should be someone other than he since he represents all three commissioners.

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Editor: George M. Bunch

Thursday July 25, 2002

Assessor's Field Public Comments

The majority of the agenda of the July 18 Gilmer County Board of Tax Assessor's meeting was handled in very little time. The "public comments" portion of the meeting brought the brisk meeting to a sudden halt and slow pace.

Assistant chief appraiser Richard Lamb told his fellow board members "everything is running smooth" and there had been 18 appeals with al but to resolved. The last day to appeal assessment notices mailed on July 8 is August 22. The last day to appeal notices with a July 16 post mark is August 30.

When board chairman Ken Kissinger opened the floor for public comments, East Ellijay business owner Oscar Poole expressed appreciation to Lamb and the office staff for the treatment he received when he went in to question his assessment, but was concerned that the increases were "too much, too soon" considering the faltering economy.

Lamb and Kissinger explained that the assessment process was governed by state law and the office had followed the procedures outlined by the law.

Bess Conner asked the board members why her property was changed from a residential status to a commercial status. She said the value of her property went from just over $100,000 to over $1 million. She also wanted to know when the change was made and who approved the change.

Lamb explained that the property was assessed at its highest and best use, which is defined by Department of revenue appraisal manuals as "the most probable, legal, and reasonable use which will maintain the highest present value as of the effective date of appraisal."

Conner countered with Section 48-5-7 (c.) of the Georgia Cond (Georgia Law) which states, "Tangible real property located in a transitional developing area which is devoted to bona fide residential uses and which otherwise conforms o the conditions and limitation imposed in ;the chapter for bona fide residential transitional property shall ve assessed for property Tas. purposes an 40 percent of its current use value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's current use value.

Conner maintains that the property where her house is situated is "transitional" in the most optimistic of scenario.

Conner then asked Kissinger why he sent a report to her house that contained information from an investigation conducted by the law firm of Meadows. Ichter, and Trigg at the request of the Gilmer County commissioners, that contained information about the allegations of sexual harassment against former chief appraiser Gene Meads.

A defensive Kissinger sternly denied sending the report. When Connor said the report was mailed from Tallulah Falls, Kissinger said he did not live or work in Tallulah Falls. She said he worked near there. He said he worked in Cornelia. (Cornelia and Tallulah Falls ore near the South Carolina border, 17 miles apart).

The board chairman was then asked if one of the employees who made the allegations against Meads, Christy Turner, would be returning to work in the assessor office at the request of a commissioner or commissioners. Kissinger said the board of assessors was on independent board and would make their own decisions without influence from; the commission board.

When the question was asked again by the Times-Courier about the return of Turner, Kissinger again reemphasize the board's position, but assistant chief appraiser and board member Lamb said, "That is not going to happen as long as I an here."

Assessor board attorney Diane Marger-Moore said she needed to all if a Position became available, the board members would review all applications and hire the most qualified applicant.

Another lady in attendance asked the board members if they were basing their values on speculation, to which they replied they were not.

Board member Billy Masters made a motion to go into executive session that was seconded bay Jeff Holloway in order to discuss a personnel matter. No action was taken.

In addition to Kissinger, Lamb, Masters, and Holloway, board member Tonya Abercrombie was also present.

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Editor: George M. Bunch

July 25, 2002

Out on a Limb

I have come across a situation I am watching with great interest.

Last week, six of the seven ladies who work in Gilmer County commission chairman Rayburn Smith's office filed a complaint with commissioners Charles Fowler and Stele Ralston saying they were subjected to a hostile work environment. That two commissioners accepted the complaint t on Monday, July 25.

Smith was our of the office for the rest of the week last week and had not shown up at his office during regular business hours b y press time Tuesday, July 23. The word on Tuesday from the commissioners office and the county road department employees running bach and forth between the two offices getting papers for him to sign.

However, the most interesting tidbit is that he left a note last Friday, July 19, for the fine ladies who work in his office to ;gather and send information to an attorney. He asked for this under the Freedom on Information Act.

As you readers recall, the Times-Courier recently asked for some information concerning how your tax dollars were being spent with regards to attorney. Fees. Smith responded with a letter saying it would cost us over $2000 for his office to produce the information, and we would be charged that amount.

We are not going to pay for the information. I will made an appointment to look over the records myself.

In May of this year, a Gilmer County taxpayer was charged $59 for budget information, revenues, and expenditures relating to the recreation and parks department. (4.5 hrs. compiling and copying information at $12.50= $56.25 and 11 copies at 25 cents each = $2.75 for the total.)

I can assume that Mr Smith will remit compensation for the information he requested and it will be at the same rate comparable to what he feels others should be charged for requested information.

News Editor: Al Summers

Appendix AI, 2 of 2: Times Courier dated 7/25/02

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Editor: George M. Bunch August 1, 2002

WILL THE REAL PROPERTY VALUE, PLEASE STAND UP!!!

As most of you know by now, the tax assessors office mailed out new assessments notices on July 8, July 16, and some have been filtering out since July 19. We have received three (3) notices on our residential property so for with two (2) different values and one (1) giving us back our homestead exemption that had gotten lost somewhere in the shuffle and confusion down through the years, that one was still worth over a million dollars, we haven't even filed our appeal yet!!! Johnny on the spot, aren't they? It seems that we are playing a game called To Tell The Truth (You remember the old TV game, three people claim to be the same person, only one is telling the truth)!!! What do you folks think? So far, we have received two (2) notices on a piece of commercial property each with a different value and we haven't filed our appeal there either. Our neighbors, adjoining us have also received second notices, some have filed appeals and others have not. We are wondering if any of the rest of you have received your "BOBBING UP AND DOWN" notices yet?

Sone of our neighbors have received a visit from the two gentlemen in the tax assessors office and they carried with them a form to file for preferential residential transitional status. That is where you sign your property up with the county to get taxed on 30% of the value, instead of 40%. You cannot sell your property for 10 LOOOONNNNNNGGGGGGGG years or you will get taxed and penalized out the wazoooooo! In the meanwhile should you decide you want to relocate, you cannot sell your property as commercial,

Appendix AJ, 1 of 2: Times Courier dated 8/01/02 without all the stiff taxes and penalties. All of this attention from the two gentlemen from the assessors office is commonly known as covering your tail after you have screwed up big time!!!

Something else interesting about the Progress Road property and 515 areas is that folks have been receiving telephone calls wanting to know if they want to sell. Whoa !!! Hold it, right there folks...just stop, back up and take a long hard look...somebody out there thinks we all just fell off a turnip truck last night..well they need to rethink what they just thought!!! Our mamas did not raise no fools...we can just sit here in our houses, on our residential transitional property valued at current use per the DOR (Dept. Of Revenue), in our county that has no zoning, and "wait for our ship to come in" or until we get good and ready to move on, then we can decide to sell our property as commercial and we can reap the rewards ourselves. It just makes good sense that when, and if, we do decide to move our residences that naturally our area would be commercial, so think about it folks, if your residential property is worth half a million or a million now, in 3 to 5 years it will be worth a lot more. So hold on to your hats for the ride, or 'til you get too old to live by yourself, then you can sell for a lot of money and go live with your kids and let them help you spend all that money you made when your property actually became commercial at your discretion!!!

Another surprise to me was that all of the commercial property in the county was SUPPOSED to be reassessed. Folks, would you believe that only the city of Ellijay, East Ellijay, part of Progress Road and certain areas of 515 got assessed...reckon which maps they used, the old ones or the new ones hanging on Mr. Lamb's and Mr. Leschnik's office walls (you know...the pond maps). Now what do you think of that?

Folks, if I can help you in any way, please call me!!!
Bess Connor, Ellijay, GA •635-5857

Appendix AJ, 2 of 2: Times Courier dated 8/01/02